UNITED STATES DISTRICT COURT

DISTRICT OF PUERTO RICO

In Re:	)	Docket No. 3:17-BK-3283(LTS)
	)	
	)	PROMESA Title III
The Financial Oversight and Management Board for Puerto Rico,	)	(Jointly Administered)
as representative of	)	
The Commonwealth of Puerto Rico, *et al.*	)	November 17, 2021
Debtors,	)	

In Re:	)	Docket No. 3:17-BK-3566(LTS)
	)	
	)	PROMESA Title III
The Financial Oversight and Management Board for Puerto Rico,	)	(Jointly Administered)
as representative of	)	
The Employees Retirement System of the Government of the Commonwealth of Puerto Rico,	)	
Debtors,	)	

In Re:	Docket No. 3:19-BK-5523(LTS)
The Financial Oversight and Management Board for Puerto Rico, *as representative of* The Puerto Rico Public Buildings Authority, Debtors,	PROMESA Title III (Jointly Administered)

CONFIRMATION HEARING - DAY SIX

BEFORE THE HONORABLE U.S. DISTRICT JUDGE LAURA TAYLOR SWAIN

UNITED STATES DISTRICT COURT JUDGE

AND THE HONORABLE U.S. MAGISTRATE JUDGE JUDITH GAIL DEIN

UNITED STATES DISTRICT COURT JUDGE

APPEARANCES:

ALL PARTIES APPEARING BY VIDEOCONFERENCE AND TELEPHONICALLY

For The Commonwealth of Puerto Rico, *et al.*: Mr. Martin J. Bienenstock, PHV
Mr. Brian S. Rosen, PHV
Mr. Timothy W. Mungovan, PHV

For The Lawful Constitutional Debt Coalition: Mr. Susheel Kirpalani, PHV
Mr. Daniel Salinas-Serrano, PHV

APPEARANCES, Continued:

For Puerto Rico Fiscal Agency and Financial Advisory Authority and the Governor of Puerto Rico:	Ms. Maria J. DiConza, PHV
For Peter C. Hein:	Mr. Peter C. Hein, Pro Se
For Finca Matilde, Inc.:	Mr. Eduardo J. Capdevila-Diaz, Esq.
For the Official Committee of Unsecured Creditors:	Mr. Luc A. Despins, PHV
For Assured Guaranty Corp. and Assured Guaranty Municipal Corp:	Mr. William J. Natbony, PHV
For The Official Committee of Retired Employees:	Mr. Robert D. Gordon, PHV
For Service Employees International Union and International Union, United Automobile, Aerospace and Agricultural Implement Workers of America:	Mr. Peter D. DeChiara, PHV
For Credit Unions:	Mr. Enrique M. Almeida, Esq.
For U.S. Bank Trust National Association and U.S. Bank National Association:	Mr. Ronald J. Silverman, PHV
Asociacion Puertorriquenona de la Judicatura, Inc.:	Mr. David C. Indiano, Esq.
For Asociacion de Jubilados de la Judicatura de Puerto Rico:	Mr. Enrique J. Mendoza-Mendez, Esq.

APPEARANCES, Continued:

For Asociacion de Maestros de Puerto Rico and Asociacion de Maestros de Puerto Rico-Local Sindical:	Mr. Jose Luis Barrios-Ramos, Esq.
For Federacion de Maestros de Puerto Rico, EDUCAMOS, and UNETE:	Ms. Jessica Mendez-Colberg, Esq.
For PFZ Properties, Inc.:	Mr. David Carrion-Baralt, Esq.

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I N D E X

San Juan, Puerto Rico

November 17, 2021

At or about 9:30 AM

* * *

THE COURT: Good morning. Would the courtroom deputy please call the case?

COURTROOM DEPUTY: Good morning.

The United States District Court for the District of Puerto Rico is now in session. The Honorable Laura Taylor Swain presiding. Also present, the Honorable Magistrate Judge Judith Gail Dein. God save the United States of America and this Honorable Court.

In re: The Financial Oversight and Management Board for Puerto Rico as representative of the Commonwealth of Puerto Rico, et al., PROMESA, Title III, Case No. 2017-BK-3283, 2017-BK-3566, and 2019-BK-5523, for further confirmation hearing.

THE COURT: Thank you.

Again, good morning. Would the video participants please turn your cameras on for these introductory remarks and instructions?

Welcome back, counsel, parties in interest, and members of the public, and press who are observing today's proceedings by Zoom video connection, or are listening by telephone. Today is a continuation of the Confirmation

Hearing for the Modified Eighth Amended Plan of Adjustment for the Commonwealth of Puerto Rico, et al.

The Court will be hearing oral argument concerning certain legal issues implicated by the motion to confirm the Plan, and specifically on rulings that have been requested, and a form of proposed Order. To ensure the orderly operation of today's virtual hearing, all parties appearing by Zoom must mute their microphones when they are not speaking, and turn off their video cameras if they are not directly involved in the presentation or argument. When you need to speak, you must turn your camera on, and unmute your microphone on the Zoom screen.

I remind everyone that, consistent with court and judicial conference policies, and the Orders that have been issued, no recording or retransmission of the hearing is permitted by anyone, including but not limited to the parties, members of the public, and members of the press. Violations of this rule may be punished with sanctions.

The Agenda for today, which was filed as Docket Entry No. 19260 in Case No. 17-3283, is available to the public at no cost on Prime Clerk from those who are interested. I encourage each speaker to keep track of his or her own time during the arguments. The Court will also be keeping track of the time, and will alert each speaker when there are two minutes remaining with one beep, and when time is up, with two

beeps. Here is an example of the beep sound.

(Sound played.)

THE COURT: If your allocation is two minutes or less, you will just hear the final beeps.

I will be calling on each participant during the hearing. If you wish to be heard when I haven't called on you, please use the "raise hand" feature at the appropriate time. That feature of Zoom can be accessed by selecting the reactions icon in the tool bar located at the bottom of the Zoom screen. After you finish speaking, you should select the "lower hand" feature.

As always, I ask that we don't interrupt each other, that you don't interrupt each other or me, because that makes it difficult to create an accurate transcript, and, as always, I apologize in advance for breaking the rule, because I may interrupt if I have questions, or if you go beyond your allotted time. If you have difficulty hearing me or another participant, please use the "raise hand" feature, so that we can attend to that.

This morning's session will go to 12:50 PM Atlantic Standard Time, and then we will take a lunch break. That lunch break will, therefore, be at 11:50, or ten minutes to 12:00 Eastern Time. We will also take a ten-minute break at about 11:30 AM Atlantic Standard Time, which will be 10:30 AM Eastern Time. We will resume, as necessary, at 3:10 PM

Atlantic Standard Time, which would be 2:10 PM Eastern Time. Unfortunately, we do need to take a long midday break today, because of some scheduling conflicts.

I would ask that you turn your cameras off now, and turn your camera back on when I reach your Agenda item. Is there anyone who needs to raise anything before we begin the arguments that are on the Agenda? If so, raise your hand.

I don't see any hands raised, and so we will turn to the first Agenda item, which is the Oversight Board's request for rulings regarding Act 53-2021. Counsel, I have reviewed the submissions, and I would ask that, in your arguments, you focus on issues regarding the interpretation of the statute with regard to the requested rulings, as opposed to general objections to the provisions of the Plan.

The first speaker is Mr. -- well, it's the representative of the Oversight Board for 35 minutes. Mr. Bienenstock and/or Mr. Mungovan?

MR. MUNGOVAN: Good morning, Your Honor. Timothy Mungovan.

THE COURT: Good morning.

MR. MUNGOVAN: May it please the Court. I'm appearing on behalf of the Financial Oversight and Management Board, as the sole Title III representative of the debtors in this proceeding.

The Court should enter the rulings requested by the

Board in its notice, Your Honor. Specifically, that the debt authorization in Act 53 is conditioned only on the Plan's cancellation of the monthly benefit modification, as set forth in the Plan, and nothing in Act 53 requires cancellation of the freeze and the elimination of the COLA.

The Court should enter those rulings based on three basic things: Number one, the plain language of Act 53, and, if needed, the extrinsic evidence confirms the Plan satisfies Act 53. As to JRS, the freeze and the elimination of the COLA do not violate constitutional principles, and they are not otherwise wrongful. I understand, from the Court's guidance, that you do not want to hear argument on that. And then, third, as set forth in our brief, no enabling legislation is required to implement the freeze. I understand as well from your instruction that you do not wish to hear argument on that as well.

THE COURT: Thank you.

Mr. Mungovan, is it possible for you to turn up your volume on your end? Would you just -- or it might be on my end, but I'm having a little difficulty hearing you.

MR. MUNGOVAN: Let me try again, Your Honor. Can you hear me now?

THE COURT: Yes. Thank you. I could hear you before, but I can hear you better now.

MR. MUNGOVAN: Okay. Thank you.

So as a road map, Your Honor, we were going to divide the arguments between Mr. Bienenstock and myself. I think what I would propose is, subject to your guidance, that I'm going to cover the statutory interpretation arguments that the Court has indicated that it wants to hear argument on; and Mr. Bienenstock I believe is going to cover the supplemental, or filing by -- the limited response of the UAW and SEIU with respect to the scope of the proposed rulings as set forth in paragraph 33 of the Board's response brief filed on Monday night, and specifically with respect to the application of paragraph 62 of the proposed Confirmation Order.

THE COURT: Very well then. Please proceed.

MR. MUNGOVAN: I will argue for 35 minutes, Mr. Bienenstock will argue for ten, and we'll reserve the remaining 15 minutes for rebuttal.

THE COURT: All right. So Mr. Kirpalani will not be arguing?

MR. MUNGOVAN: I apologize, Your Honor. I will argue for 25 minutes, Mr. Bienenstock will argue for ten, and Mr. Kirpalani will be happy to hear that he has his ten minutes restored at the end.

THE COURT: Very well. Thank you.

MR. MUNGOVAN: Thank you. I apologize.

While the Board contends that the statutory language of Act 53 is clear and unambiguous on its face, I would like

to provide some factual context for the freeze, the COLA, and the monthly benefit modification, who they affect, and how they fit within the Plan of Adjustment, and the overall ability of the Commonwealth to meet its pension obligations, both the current retirees and to currently active employees.

This factual context we believe substantiates the conclusion that the imposition of the freeze and the elimination of the COLA in the Plan do not violate Act 53. I will not repeat our brief, but I will try to synthesize and distill some key points in it.

For the first point of context, I'll start with the people and their pensions. There are three systems at issue, pension systems at issue: The JRS, the TRS, and the ERS. There are retired employees, and currently active employees who are participants in those three defined benefit plans; but not every government employee, teacher, or judge is a participant in those three defined benefit plans. The more recent hires are not participants in those plans.

For the second point of context, I will summarize briefly the components of the Plan that are at issue: The monthly benefit modification, the freeze, and the elimination of the COLA. For the monthly benefit modification, it was a cut to pensions that were already earned, full stop. It was contained in the Seventh Amended Plan, and provided for the reduction of up to 8.5 percent of monthly pension payments in

excess of $1,500. It applied to all three defined benefit plans, and to both retired employees and currently active employees who had accrued benefits under those defined benefit plans subject to the $1,500 threshold, monthly threshold.

The monthly benefit modification has been removed from the Eighth Amended Plan, and I respectfully refer the Court to ECF no. 19053, and specifically section 1.337 of the Plan, at page 70 of 295 in that ECF. The pension freeze -- certain current employees in TRS and JRS are participants in defined benefit plans, and they are continuing to accrue benefits under those plans without any limit, as wage levels increase, and they continue to work and earn time and service in those plans.

The freeze stops the continued accrual of those benefits under those defined plans for both TRS and JRS. The ERS plan has already been frozen since 2013, and, therefore, is not implicated in the freeze as set forth in the Plan of Adjustment. The freeze, importantly, only applies to current employees of TRS and JRS who are participants in those defined plans. For example, teachers hired before August 1, 2014, are impacted by the freeze. Teachers hired after that date are not impacted by the freeze.

The participants in those defined benefit plans will retain whatever benefits they have accrued up to the effective date of the Plan, according to the freeze. Again, they will

retain whatever they have earned and accrued up to the effective date of the Plan.

The Plan provides for the freeze of defined benefit plans in place for Class 51-H, which are active employees participating in TRS, and 51-I, which are active employees participating in JRS. And that's in Plan sections 55.8 and 55.9. And for JRS, that section is on page 122 of 295, at ECF 19053. I would also respectfully direct the Court to Exhibit E to the Plan at ECF page 209 of 295; and then separately, for TRS, the applicable section is 59.9(b), and it is on pages 122 and 123 of 295, again, at ECF 19053.

The Plan works, and the freeze in the Plan works towards leveling the playing field, and establishing fair and uniform retirement benefits for all Commonwealth employees, both current and retired. The elimination of the COLA -- JRS participants currently receive an increase to their pension payments through COLAs every three years. COLAs were eliminated for all ERS and TRS participants in 2008 or earlier. The Plan eliminates all COLAs going forward for all classes. That's sections 55.1 through 55.9 in the Plan, and that's ECF page 119 through 123, again at ECF 19053.

As a result of the elimination of the COLA, the amount of monthly pension benefits will be fixed at the current amount as of the effective date. As with the freeze, the elimination of the COLAs in the Plan work to level the

playing field for everyone, all Commonwealth employees, both current and retired.

The third point of context is how the freeze and the elimination of COLAs fit within the Plan of Adjustment. Simply put, they are essential to the confirmation of the Plan. They relate to the Commonwealth's accrual of future obligations, and, thus, Puerto Rico's ability to achieve fiscal responsibility and access to the capital markets.

The Certified Fiscal Plan requires the freeze and the elimination of COLA. Let me state that again. The fiscal plan certified in April of 2021 requires the imposition of the freeze and the elimination of the COLA. The fiscal plans from 2019 and from 2020 also required the imposition of the freeze and the elimination of the COLA.

And as the Fiscal Plan observes, these measures are essential to put an end to the practice of making promises the government cannot keep, while making sure the Commonwealth has the ability to adequately fund its remaining pension system, i.e., the PayGo system established under Act 106, and to pay in full all of the benefits that have accrued through those plans, through the effective date of the Plan of Adjustment. Because the Fiscal Plan requires the freeze, and the elimination of the COLA, the Plan of Adjustment must also include the freeze and the elimination of the COLA to be consistent with the Fiscal Plan, as required under PROMESA

section 314(b)(7).

If Act 53's authorization of new debt were deemed to require the Plan to be modified to remove both the freeze and the provisions eliminating the COLAs, the Plan would no longer be consistent with the Fiscal Plan, and would not be confirmable. Accordingly, the Plan itself requires both the freeze and the elimination of the COLA.

Separately and independently, the freeze -- if the freeze and the elimination of COLA are not implemented, the Oversight Board has determined that the Plan of Adjustment will not be feasible. The impact of eliminating the freeze and reinstating the COLAs is approximately 4.7 billion dollars, and that's set forth in the supplemental declaration of Sheva Levy. That's document no. ECF 19059, at paragraph 14.

With that context, Your Honor, the plain and unambiguous language of Act 53 establishes that the cancellation of the monthly benefit modification is the sole condition for Act 53. Articles 104 and 605 of Act 53 are the operative provisions of the act. Article 104 provides in full -- and I'm going to read it, because I think it's a key part of the argument, so give me a moment to have a drink.

Article 104 provides in full, the Government of the Commonwealth of Puerto Rico hereby declares that it is the public policy of the highest priority to protect the accrued

pensions of its public servants, who are one of the most important groups in our society. As an essential part of this public policy, the protection of the pensions of all our retirees is an important and unwavering commitment.

Therefore, with regard to the accrued pensions of government employees, it is hereby provided as follows. The legislative assembly authorizes the issuance of the General Obligation Bonds and CVIs subject to the FOMB filing an amended plan for confirmation by the Title III Court that eliminates the monthly benefit modification. Article 104 sets forth that the government's policy is to protect accrued pensions, not future benefits that may accrue, or upward adjustments to those benefits through COLAs.

By following this policy declaration with the phrase, "therefore, it is hereby provided as follows," Article 104 shows the policy is made operative through and fulfilled by the following sentence phrase: The FOMB filing an amended plan for confirmation by the Title III Court that eliminates the monthly benefit modification. That is the operation of the policy. Nothing more is required to achieve this policy, and it would be inappropriate to read any additional conditions into the policy.

Article 605 of Act 53 provides that, quote, the effectiveness of this law is conditioned to the FOMB filing an amended plan for confirmation by the Title III Court that

eliminates the monthly benefit modification as defined in the Plan. That's in Article 605. Monthly benefit modification is in turn a defined term, as defined so as to have the meaning ascribed to such term in the Plan, and that's in Article 102(qq).

Nothing in the Plan refers to a pension freeze or cost-of-living adjustment as part of the monthly benefit modification, both of which were provided for separately in the Plan of Adjustment. Act 53 does not contain the words "freeze", or "COLA", or "cost-of-living adjustment", or anything remotely close to either of those terms, even though the Plan of Adjustment contains and contained previously both of those words, and the fiscal plan has contained both of those concepts for several years.

The objectors effectively concede that point by arguing in so many words that the language zero cuts to pensions in Act 53 somehow encompasses the freeze and the elimination of COLA in the Plan of Adjustment. That argument makes little sense in the context of Act 53.

The Teachers Associations focused on the first two sentences of Article 104, which, quote, declare the public policy of the Puerto Rico legislature to, quote, protect the accrued pensions of its public servants and the, quote, pensions of all our retirees, close quote.

The Teachers Associations' argument fails. First,

they ignore the policy's express limitation to the word "accrued" in both the first and third sentences of Article 104. The word "accrued" means what has already been earned, not future benefits that will be earned through continued service and work into the future.

The freeze and the elimination of the COLA only affect future accruals. They do not affect already accrued benefits. Let me repeat that point, because I think it's critical to the interpretation of the act itself. The freeze and the elimination of COLA affect only future accruals. They do not affect already accrued benefits.

Second, the Teachers Associations ignore the provision in Article 104 tying the fulfillment of the policy of protecting accrued pensions to an express and limited condition on the issuance of the bonds, and that is to eliminate the monthly benefit modification in the Plan.

Next, the Teachers Assocations focus on the last two sentences of Article 605, but those sentences must be read in the context of 605 as a whole, and in the context of Act 53. In doing so, the Board contends that those two sentences confirm what the Board contends is the plain meaning of the act, which is a cut to the monthly payment to which active employees and retired employees are currently entitled. The sentences do not encompass the freeze or the elimination of the COLA.

I will read 605 to frame the context for the next argument. It provides as follows: This law will take effect immediately after its enactment, except for chapter five of this law, which will take effect on the date of effectiveness. The effectiveness of this law is conditioned to the FOMB filing an amended plan for confirmation by the Title III Court that eliminates the monthly benefit modification as defined in the Plan. For the sake of clarity, this act shall immediately cease to be in effect, and any transactions undertaken pursuant to it, if reductions to the pensions of government employees are decreed or implemented under the debt adjustment plan, or the restructuring of the debt. The continued effect of this act is contingent upon zero cuts to pensions.

The Teachers Associations focuses on the last two sentences, but ignores the prepositional phrase at the beginning of the third sentence, which is, for the sake of clarity, which prefaces the final two sentences. That preceding -- that prepositional phrase, for the sake of clarity, refers back to the preceding sentence, meaning the second sentence of section -- of 605, and which is the subject of -- and that is the subject of the clarification in the prepositional phrase.

And that preceding sentence, the second sentence of 605, is explicitly limited to the elimination of the monthly benefit modification. All that follows the phrase "for the

sake of clarity" in the last two sentences simply clarifies and restates what came before, and does not add any new or additional conditions. And in our brief, we cite to the *Activision Blizzard* case from the Delaware Chancery Court in 2015.

To read the final sentences of 605 as adding additional conditions, as the Teachers Associations suggest, would directly contradict the preceding sentence in the statutory text, which is limited by it's very nature to the elimination of the monthly benefit modification. Nothing in Article 605 suggests the Plan must also eliminate the freeze or the COLA modifications.

The Board's interpretation reflects the commonplace statutory construction that the specific governs the general. This principle of statutory construction, and we cite cases supporting it in our brief, has tightened applicability here in this context where the legislature has in the statute, quote, deliberately targeted specific problems with specific solutions, and we've cited to the *RadLAX* case from the United States Supreme Court. And we're given a general provision that maximum possible breadth would render this specific provision here superfluous.

If references in Act 53 to zero cuts to pensions were given the construction advocated by the objectors to preclude any conceivable alteration or limitation of all pension

benefits, the specific provisions of Act 53 expressly prohibiting the monthly benefit modification, would be rendered superfluous, because such a prohibition would already be contained in the all-encompassing prohibition on any cut to pensions.

This reading, meaning the Board's reading of Article 605 and Article 104, are consistent with the doctrine that statutes must be read as a whole. Here, Article 605 begins by identifying as the sole condition for the act's effectiveness that the, quote, FOMB filing an amended plan for confirmation by the Title III Court that eliminates the monthly benefit modification. The ensuing language later in 605 of "zero cuts to pensions," therefore, must mean simply no reduction of accrued pensions of the type that would be effectuated by the monthly benefit modification.

Indeed, each time the operative sections of Act 53 mention the policy goal of protecting government pensions, it is accompanied by a reference to Article 104, or the term "monthly benefit modification". In other words, Article 104 and Article 605 are fully harmonized, in the Board's interpretation of those acts, as applying only to the monthly benefit modification, and having no impact whatsoever on the freeze or the elimination of the Cola.

The Teachers Associations also point to the severability provision in Article 603. As a preliminary

matter, Article 603 merely provides that the conditions of Articles 605 and 104 are nonseverable, and that if they were found to be invalid, the whole statute would be without effect.

Severability is not an issue here, however, as Article 603 is not even implicated at all. In any event, the language in Article 603 confirms that, quote, the suspensive condition to avoid any cut of pensions, close quote, is embodied by Article 104, which explained already is limited to the elimination of the monthly benefit modification.

One last point on plain meaning, Your Honor. To the extent that the objectors point to the very last sentence of the law to argue that it encompasses and prohibits the freeze and elimination of COLA, we would submit that, respectfully, that makes no sense. That sentence is on page 110 of 231 of ECF 19249, and it states in its entirety, the continued effect of this act is conditioned upon zero -- excuse me, the sentence -- I'll start again. The continued effect of this act is contingent upon zero cuts to pensions.

The legislature was well aware of the freeze and the elimination of the COLA in the Plan and in the fiscal plan. The freeze and the elimination of the COLA involved literally billions of dollars. As the Supreme Court has stated, and as we said in our brief, Congress does not hide elephants in mouse holes. This would be the proverbial hiding of the

elephant in a mouse hole if that one sentence was interpreted to mean that the Plan -- the Plan of Adjustment must be changed to eliminate the freeze, and the elimination of the COLA.

And with that, Your Honor, unless the Court has questions on the interpretation, I'll stand on our brief for the remainder of the arguments, and cede remaining time to Mr. Bienenstock.

THE COURT: Thank you, Mr. Mungovan.

Mr. Bienenstock?

MR. BIENENSTOCK: Good morning, Your Honor.

THE COURT: Good morning.

MR. BIENENSTOCK: Martin Bienenstock of Proskauer Rose, LLP, for the Oversight Board, as Title III representative of the debtors.

Given Your Honor's remarks at the outset, I will only address the filing that I first saw last evening from SEIU and the UAW. It's at document no. 19278, and I think it was filed about 9:03, or something like that. But the point of the pleading is their contention that the request for the Court to enter the Confirmation Order, inclusive of paragraph 62 that we inserted, should be rejected, because paragraph 62 was not among the express requested rulings that we included in the notice of the relief we were going to seek interpreting paragraph -- or Act 53.

There are several reasons, Your Honor, why we contend the SEIU and UAW are wrong. First, as a practical matter, PROMESA section 313, headed Modification of Plan, provides that the Oversight Board, after the issuance of a certification pursuant to section 104(j) of this act, may modify the plan at any time before confirmation, but may not modify the plan so that the plan, as modified, fails to meet the requirements of this title, and it goes on.

So regardless of Act 53, Your Honor, and our motion that brings us here today, the Oversight Board has every right to amend the Plan and the Confirmation Order, obviously that goes with the Plan, as long as it's not -- doesn't make it unconfirmable. And the bankruptcy case, the Title III case, and the Confirmation Hearing have been well noticed many times to all parties in interest. Probably one of the most famous confirmation hearings ever.

In terms of the UAW and SEIU's objection the other day, they raise the "material and adverse" concept, and I want to explain why that's inapplicable. There's a provision in both the Bankruptcy Code and in PROMESA, as I said, where plans can be modified, and Bankruptcy Rule 3019, which is incorporated into PROMESA, provides that if a plan has been accepted and then the plan proponent amends it adversely, then classes that have accepted that are adversely effected cannot be deemed to accept. If they are not adversely effected by

the modification, they are deemed to accept the modified plan.

In this case, Your Honor, the ERS classes that we are talking about rejected the Plan, so we are not contending that they accepted and they're bound to accept again with our modification. We are accepting the fact that they rejected. And the only way the Plan can be confirmed is if, notwithstanding their rejection, the Court determines under section 1129(b) that it can still be confirmed, which is what we are contending. So the adverse and material standard that they raised has nothing to do with this case, and under PROMESA section 313, we have every right to make the amendment before confirmation, regardless of whether it's related to Act 53 or anything else.

Now, as a practical matter, the section -- or paragraph 62 that the Board is asking for is very restrictive. It doesn't say -- first, it's a restriction on the government, not employees. Now, we totally understand that the employees are effected by what the government does, but all people are effected by actions of the government. But as far as standing to take umbrage about paragraph 62, it's the government that's being restricted directly, and the restriction is not all encompassing in terms of wanting to improve the lot of retirees.

As Your Honor may recall from previous pleadings and arguments, there is a hope and aspiration that things will get

better, and retirees, active employees may end up with better benefits than this plan contemplates, and that would be wonderful. And creditors may end up with more, too, under the CVIs, and that would also be wonderful.

Paragraph 62 doesn't prevent any of that, except in one narrow respect. It says that without coming to the Court and showing that it won't be an undue risk of default, that there's funding, and other prudent, normal, business, common sense requirements, that the government should not reestablish a defined benefit plan or it's equivalent.

So that doesn't -- if they have extra money and they just want to make an extra payment, it may or may not be consistent with the fiscal plan and other things, but if it is, that's not effected at all by paragraph 62. Paragraph 62 only attempts to secure, for the ten-year period, the lack of a new defined benefit regime, because that's what was perhaps the primary cause of the financial distress we happened into.

And as I mentioned the other day, we are dealing now with laws -- for instance, Law 80 is already on the books in Puerto Rico. We have an agreement with AAFAF and the Governor that it won't be implemented, but it actually creates a defined benefit plan, Your Honor, so we're learning from experience. The desire to have these plans is apparently forever, and we need to stop them, at least subject to the

tests embodied in paragraph 62, for the ten-year period, so as to assure the fiscal responsibility that is the Board's mandate.

So bottom line, we think procedurally the SEIU and UAW's pleading of last night fails, because there is no restriction that we can only -- that we can't modify the Plan or Confirmation Order. And in terms of linking it to Act 53, well, it's obviously related, and we disclosed it. And this was a good vehicle, but even without that, the Board would want it, and would go forward with the modification.

Unless the Court has questions, that's all I have, Your Honor.

THE COURT: Thank you, Mr. Bienenstock. I don't have questions.

So now we'll turn to Mr. Kirpalani.

MR. KIRPALANI: Good morning, Your Honor. Susheel Kirpalani from Quinn, Emanuel, Urquhart & Sullivan on behalf of the Lawful Constitutional Debt Coalition.

THE COURT: Just one moment. There is a hand raised, which I actually don't see on my list. Let me ask my deputy here.

Let's see. Counsel for SEIU and the UAW. I'm sorry. Mr. DeChiara, you have to unmute.

MR. DECHIARA: Yes, Your Honor. Peter DeChiara from the law firm of Cohen, Weiss & Simon, LLP, for the UAW and

SEIU.

I apologize for interrupting, Your Honor, but in light of Mr. Bienenstock's remarks, my clients would respectfully request time to respond. And we would be happy to do that at the end of the presentations by the other parties who are being heard in opposition to the Act 53 motion.

I don't think I would need long, maybe -- certainly less than ten minutes.

THE COURT: All right. I will grant you ten minutes, and I will call on you after Mr. Mendoza-Mendez, who will speak for the AJJPR.

MR. DECHIARA: Thank you very much, Your Honor.

THE COURT: Thank you.

So, Mr. Kirpalani, we return to you.

MR. KIRPALANI: Thank you, Your Honor. And, actually, just -- I would like to ask my partner, Danny Salinas, from San Juan to handle this argument relating to the Puerto Rico statute and its meaning.

THE COURT: Very well. Good morning, Mr. Salinas.

MR. SALINAS-SERRANO: Good morning, Your Honor. Can you hear and see me?

THE COURT: Yes, I can.

MR. SALINAS-SERRANO: Thank you very much. And may it please the Court, Daniel Salinas Serrano, of Quinn,

Emanuel, Urquhart & Sullivan, on behalf of the Lawful Constitutional Debt Coalition. May I proceed, Your Honor?

THE COURT: Yes, you may.

MR. SALINAS-SERRANO: Thank you. Your Honor, given Mr. Mungovan's great job taking the Court through the language of Act 53, I'd like to use my time to provide a bit more context, not because I think Act 53 is ambiguous or requires that the Court delve into the legislative intent to interpret it. It is not and does not. But because that context I think underscores the fallacy of the objectors' arguments.

Now, the treatment of public employee pensions has featured prominently, both in and outside this courtroom, for well over two years, Your Honor. The Oversight Board has consistently and publicly required benefit reductions, while the Commonwealth Government has resolutely and just as publicly opposed any alteration of those benefits.

This debate, Your Honor, has not been theoretical. Beginning in the first Plan of Adjustment filed in this case in September, 2019, at ECF 8765, the Oversight Board consistently sought to, one, cut the existing accrued monthly pension payments of all public employees above a certain threshold, or what the Plan has always called the monthly benefit modification that you heard Mr. Mungovan speak about; two, freeze monthly pension payments of teachers and judges at current levels, so as to prohibit any future potential

increases in those monthly pension payments; and, three, suspend any future cost-of-living adjustments, or COLAs, for judges' pensions.

None of this, Your Honor, was secret. All of it was the subject of vigorous public debate, and even more vigorous private wrangling. On July 30th, 2021, almost two years later, the Oversight Board filed its Seventh Amended Plan of Adjustment at ECF 17627, which imposed the same three measures with respect to pensions that the Board had maintained in the preceding six versions of the Plan: The monthly benefit modification, the freeze, and the COLA suspension.

That, Your Honor, the Seventh Amended Plan, was the operative version of the Plan when legislators, the Governor, and the Oversight Board were negotiating the language of what would later become Act 53. Everyone then knew what the levers were, because the levers had never changed: The monthly benefit modification, the freeze, and the COLA suspension.

On October 25th, Your Honor, the Governor, the Senate President, and the Speaker of the House of Representatives appeared before the Court. Each of them expressed his confidence that the legislation they were putting the final touches on would satisfy the PSA and implement the Plan. It was obvious that each of them also understood the enormity of the stakes if they failed; but, Your Honor, these leaders chose compromise over failure, and enacted Act 53.

If I may share my screen briefly, Your Honor?

THE COURT: Yes, you may. I think we have to let you do that, so hold on a moment.

All right. So we've given you the ability to share your screen.

MR. SALINAS-SERRANO: And can you see my screen, Your Honor?

THE COURT: Yes.

MR. SALINAS-SERRANO: You should be seeing Article 104 of Act 53.

THE COURT: Yes. I can see your screen now.

MR. SALINAS-SERRANO: Thank you, Your Honor. And I show you this because, as Mr. Mungovan explained, it really is the key provision of the act with respect to the interplay between pension treatments and the authorizations granted under the act for the issuance of the GO bonds and the CVIs.

Now, fully aware that the Seventh Amended Plan impaired both accrued pension benefits through the monthly benefit modification and unaccrued pension benefits, as Mr. Mungovan explained, through the freeze and the COLA suspension, Act 53 conditioned the authorization of the GO Bonds and CVIs only on the unimpairment of accrued benefits. That is clear from the plain text of Article 104, Your Honor.

Legislators undoubtedly would have preferred to block both impairments of accrued and unaccrued pension benefits,

and, Your Honor, they could have easily done so. Just as the legislator's conditioned their authorization of the GO Bonds and CVIs on the elimination of one of the three pension impairments in the Plan, the monthly benefit modification, which, as you can see highlighted in green at the end, they plucked directly from the Plan. They could have done the same with the freeze and the COLA suspension, but they didn't, because the legislators and the government compromised.

In fact, as Mr. Mungovan noted, the Court will not find any mention of freezes or COLAs anywhere in Act 53. Not a single mention, Your Honor. As the Oversight Board has explained in its submission, however, the Senate actually passed a version of the bill prior to Act 53 that did condition effectiveness on the removal of any freeze from the Plan. So the legislature clearly was aware that the Plan imposed a freeze, and clearly knew how to oppose that freeze, or require that -- the elimination of that freeze to be a condition. But that language did not make it into Act 53, Your Honor, because, again, the government compromised.

Now, the objectors' reliance on the phrase "zero cuts" and other general references like "no reductions to pensions" in Act 53, changes absolutely nothing. Their reading runs counter to not only Act 53's plain text, as Mr. Mungovan explained, but also to the act's statement of motives, which is the very best and clearest expression of

legislative intent.

And if I may, can I -- let me stop sharing and share again, Your Honor. Apologies.

THE COURT: Thank you. So you're going to share a different screenshot?

MR. SALINAS-SERRANO: I am. I apologize.

THE COURT: That's fine. So we'll leave you with the sharing rights. Okay.

MR. SALINAS-SERRANO: Thank you, Your Honor. Can you see it now, Your Honor?

THE COURT: I see something that says you've started screen sharing, but I don't see your screen -- now I see it, the statement of motives.

MR. SALINAS-SERRANO: Thank you, Your Honor.

Now, these are excerpts from Act 53's statement of motives, and as you can see from the first excerpt, which is taken from ECF 19249 at page 79, you can see that like Article 104 of the statement of motives clarifies that the provisions of Act 53 that seek to protect pensions are aimed at, quote, current accrued benefits, future contingent benefits, like the increases and COLAs, are neither current nor accrued, and, therefore, are not included in Act 53's reference to zero cuts.

Further down, taken from act -- 19249, at 82, the legislative assembly also explained that it was motivated by

the fact that retirees, quote, have already suffered cuts in their pensions as a result of the enactment of statutes that reduced pension benefits, increased the amount of employee contributions, and raised the retirement age.

The legislature did not include freezes as examples of prior cuts. It could have, however, because in 2013, under Act 3 of that year, the government reformed the ERS pension system by, among other things, freezing future monthly benefit increases. Now, by omitting this freeze from its description of cuts that retirees suffered in the past, the legislature again confirmed that its conception of pension cuts is limited to reductions or elimination of actual accrued monthly benefits.

And the last sentence of that same excerpt, Your Honor, makes clear that the legislature decided to exclude any freeze of future unaccrued benefit increases or COLAs as the plain text already makes clear. Now, the legislature drew a line between accrued and unaccrued pension benefits. That line drawing exercise is consistent with and makes sense in light of a line of Puerto Rico Supreme Court cases that discuss what the Court calls acquired rights.

Now, the Puerto Rico Supreme Court has discussed -- has defined acquired rights as those that are, quote, definitively incorporated into the patrimony of a person. And we cite Hernandez Colon v. Policia de Puerto Rico, 177 D.P.R.

121. It's a 2009 case.

According to the Supreme Court, the opposite of an required right is a mere expectation. Now --

(Sound played.)

MR. SALINAS-SERRANO: May I finish, Your Honor?

THE COURT: You can sum up this point, yes.

MR. SALINAS-SERRANO: Now, acquired rights are legal faculties that are regularly exercised, while expectations are mere probabilities or hopes. The Puerto Rico Supreme Court's distinction between acquired rights and mere expectations mirrors what the legislature did in Act 53, because the payments that retirees already receive, and that would have been effected by the modified -- by the monthly benefit modification, were acquired in that the retirees already receive it, and it enters into their patrimony. Whereas future potential increases and cost-of-living adjustments are mere probabilities or hopes that, according to the Supreme Court, can be effected and modified by a change in law.

THE COURT: Thank you.

MR. SALINAS-SERRANO: Now, Your Honor, in light of these arguments, and those detailed in our joinder, we respectfully request that the Court discard the strained reading of Act 53 urged by the objectors, and that, through the findings and conclusions requested by the Oversight Board, it give effect to the hard fought compromises that all

stakeholders achieved, including those embodied in Act 53.

THE COURT: Thank you, Mr. Salinas.

MR. SALINAS-SERRANO: Thank you, Your Honor.

THE COURT: Next, for the Teachers Associations, Ms. Mendez-Colberg.

MS. MENDEZ-COLBERG: Good morning, Your Honor. Can you see me and hear me?

THE COURT: Yes, I can. Good morning.

MS. MENDEZ-COLBERG: Good morning. Thank you. May I proceed?

THE COURT: Yes, you may.

MS. MENDEZ-COLBERG: Thank you.

Good morning. My name is Jessica Mendez-Colberg, on behalf of Federacion de Maestros de Puerto Rico, EDUCAMOS, and UNETE, for their Spanish acronyms. And I will be referring to them collectively as the Teachers Associations.

Your Honor, the Oversight Board stated in its reply that the operative sections of Act 53 are clear and unambiguous, and that the only condition to Act 53's effectiveness is the removal of the monthly benefit modification from the Plan.

First of all, if Act 53 is so clear and unambiguous, as the Oversight Board portrays, then the Board would not be requesting this Court for a ruling on the meaning of Act 53, or anticipating future challenges to the act. Sure, when it

comes to statutory interpretation, if the law is unambiguous, the Court should look at the plain text of the statute, but, still, the statute must be analyzed as a whole.

When we look at Articles 105 and 605, in which the Board mainly focuses, we see ambiguity within the act. What did the legislature intend to protect? What is the public policy?

Yes, Article 104 speaks in terms of accrued pensions, but it also speaks about the protection of pensions of all our retirees and an important unwavering commitment. Does that mean active TRS participants will have future benefits accruing? Does that mean retired TRS participants? Does that mean all of them?

Now, Article 605, on the other hand, conditions the effectiveness of the act to the Oversight Board's filing an amended plan of adjustment that eliminates the monthly benefit modification, and that's the part that the Oversight Board stresses the most. But Article 605 also states that the continued effect of this act is contingent on zero cuts to pensions. It doesn't say accrued pensions. And as we stated in our objection, zero means zero.

That same article goes further to say, and it states, and I quote, "for the sake of clarity," that the law shall immediately cease to be in effect if reductions to the pensions, stated in general terms, of government employees are

decreed or implemented under the Plan or the restructuring of the debt. It says "or". It could be either option.

And that particular wording was not in the original version of the House Bill 1003. That last sentence that specifically states "for the sake of clarity," was added through the amendments of the -- of the act. Why would the legislative assembly feel the need to add "for the sake of clarity," and then speak in terms of pensions in general terms?

Now, precisely the wording of Articles 104 and 605 is ambiguous, because the Court can turn to extrinsic evidence to interpret the legislative intent. And with respect to extrinsic evidence, the Oversight Board turns in the reply brief to the different versions of the Bill 1003 to put out that these previous versions specifically mentioned the freeze and the COLAs, and that such references were eliminated in the version of House Bill 1003 that ultimately was enacted as Act 53.

And we can actually agree on that point. Act 53 does not specifically mention the freeze and the elimination of the COLAs right now as it was enacted, but the interesting part is House Bill 1003, particularly the version of October 19, stated in Article 104, that counsel read the entire article, Counsel for the Oversight Board, but that original version of Article 103 stated that the legislative assembly authorized

the issuance of the General Obligation Bonds conditioned to the Oversight Board amending the Plan of Adjustments to remove the monthly benefit modification, but it also, at the end, added that this condition does not affect the freezing, or future accrual, or the elimination of future adjustments for increases in the cost of living. And that part was eliminated from Article 104.

In other words, the bill used to clarify that the condition to eliminate the monthly modification was not effected by the freeze, and that was eliminated. That's what the Oversight Board is looking for, that the -- that the condition is only subject to the monthly benefit modification. But the fact that the legislature eliminated that language and instead -- the fact that the legislature eliminated that language, and we were left with general provisions throughout the act, referring to any cuts, zero cuts in such general terms means that the legislative assembly had the opportunity to specifically state it in that way.

Now the irony of the Board's argument is that the Board thinks that because Act 53 does not address the freeze and the COLAs right now, then that it is authorized to implement them. On the contrary, the total absence of legislation regarding such reforms to the retirement system does not mean that the Board is then authorized to implement such provisions through the Plan of Adjustment.

And we submit that the Board needs the enabling legislation to implement such reforms. And that was actually agreed when Governor Pierluisi -- the Board actually agreed with Governor Pierluisi's assessment of Act 53 when he stated that this is an issue separate from Act 53. And he reiterated, to be clear, Act 53 does not implement the freeze, nor prevents a freeze from occurring.

So when analyzing the statutory text as a whole, we can turn to Article 603, which the -- my friends on the other side hadn't mentioned. Article 603 mandates that the restructuring transactions authorized in the act cannot be enforced if the suspensive condition to avoid any cuts of pensions in the Plan of Adjustment or Article 104 are left without effect, because the logical interpretation of the statute is that the legislative assembly expressly intended for no cuts whatsoever to the pensions, including the monthly benefit modification as it is stated clearly in Article 104, but, also, any cuts of pensions, zero cuts to the government employees, as stated in Articles 603 and 605.

And, again, the wording on Article 603 that refers to any cuts was present -- was not present in the early versions of Bill 1003; but the legislature made sure to incorporate it, and, with it, Act 53 was enacted. With such wording, this Court cannot grant the Oversight Board's request for an interpretation of the statute that falls far from the text of

the law. It would be illogical to interpret that the act -- to interpret the act as if the legislative assembly only intended to condition the issuance of new debt to the elimination of the monthly benefit modification, and still allow the Oversight Board to implement a Plan of Adjustment that imposes other cuts and freezes to pensions when the public policy, and I quote, of the highest priority, is to protect the pensions.

Now, the public policy of zero cuts means zero, nothing at all. Now, if we would agree that the only condition for the issuance of the new bonds is the elimination of the monthly benefit modification, then the ruling of this Court needs -- then the ruling of this Court should end there, but the Board wants to go further, so that the ruling of this Court allows it to implement the freeze and the elimination of the COLAs through the Plan of Adjustment, even when the act does not expressly allow it. And there is no enabling legislation, as required by section 314(b)(5) of PROMESA. Thus, the Plan is not confirmable, and no pension system reform can be implemented without legislation to that effect.

The Oversight Board states that no applicable law requires authorization of the freeze and the elimination of the COLAs, but the Board only cites the part of section 314(b)(5) that says that the legislation is required when it is necessary under applicable law. And the Board asserts that

there is no applicable law.

But section 314 also calls for the legislation necessary to carry out the provisions of the Plan, and in that sense, the Board does not have authorization from the legislative assembly to carry out the provisions of the Plan that implicate any freezes, the elimination of the COLAs, or reforms to the TRS.

THE COURT: So, Ms. Mendez-Colberg, doesn't that present the issue for the Court of a legal determination of whether legislation is necessary? The Oversight Board argues that the legislation is not necessary, because of the provisions of PROMESA, and the incorporated provisions of the Bankruptcy Code, and you assert that it is. So that's something that I have to determine, correct?

MS. MENDEZ-COLBERG: Yes, Your Honor. That's correct. The Court would need to determine if the Oversight Board can implement the Plan of Adjustment without the enabling legislation to carry out the provisions of the Plan. That is what we're saying.

And particularly important here in the context of the Title III, Your Honor, where, unlike the Chapter Nine cases, here it is not the debtor, it is the representative of the debtor, the one that's making the decisions that -- the one that formulates the Plan of Adjustment and implements it. So it's all part of the awkward power sharing agreement that this

Court has recognized that presents in the context of PROMESA.

Now, as for the preemption, this cannot be invoked to override the exclusive prerogative that PROMESA grants to the legislature. Preemption displaces local legislation, but there is still a need to enact new legislation that establishes the provisions necessary to carry out the provisions of the Plan of Adjustment. And that includes those provisions that attempt to modify in any way the TRS.

The Plan of Adjustment and the Fiscal Plan in and of themselves cannot serve as the legislation required to confirm the Plan. And section 314(b)(5) only grants the power to enact enabling legislation to the Government of Puerto Rico, as this Court has already recognized with the awkward power sharing agreement. And the Oversight cannot bypass the required legislation that section 314 mandates through the Confirmation Order or the preemption doctrine.

The Plan of Adjustment only states a summary of the modifications with respect to the freezes of the pensions, and such modification -- and that such modifications altered the benefits provided by the TRS. But, again, this is not the legislation that is necessary to implement the Plan.

Now, for the sake of the argument, if it is conceded that the provisions of the Plan of Adjustment caused several laws to be preempted by PROMESA, the Plan itself is not, as I mentioned, the enabling legislation, even if the Plan is

amended to be more specific.

Now, the Oversight pointed out in their motion that one of the objectives to request this ruling from the Court, in interpreting Act 53, is to prevent the Puerto Rico Government from circumventing the terms of the Plan through subsequent legislation. First, it has been previously discussed, the importance of respecting the legislative process, and that was what the representatives of the legislative assembly and the Governor stated to this Court in the urgent status conference of October 25th.

The Oversight cannot -- the Oversight Board cannot use this Court's ruling to act to -- ruling on Act 53 to prevent or restrict the Commonwealth from enacting legislation that might be used to implement any type of reform or increase of benefits of the TRS participants at some point in the future. The Over -- for that, the Oversight Board has alternative -- has the mechanisms through PROMESA sections 108 and 204 that provide for the mechanisms to block implementation or enforcement of laws that have been enacted, but the Board cannot prevent the Government of Puerto Rico from enacting legislation as of this point.

Finally, Your Honor, the Board also states that there is no need for the enabling legislation, because section 365 of PROMESA allows the reinjection of future obligations to teachers, but here the issue is whether the Plan of Adjustment

meets the enabling legislation to implement the provisions of the Plan.

Finally, Your Honor, we would like to state for the record that it is bad enough that the Oversight Board is an undemocratic entity that is calling all the shots upon the people of Puerto Rico's future. It is worse to give in to the Oversight Board's interpretation of this act that aims to protect pensions of government employees and allow the Board to overextend its powers to still impose further cuts over the legislature's intent.

The teachers deserve better. The people of Puerto Rico deserve better. As such, we respectfully request the Court to deny the Oversight Board's urgent motion. Thank you, Your Honor.

THE COURT: Thank you, Ms. Mendez-Colberg.

The next speaker is Mr. Barrios-Ramos for the AMPR for 15 minutes.

MR. BARRIOS-RAMOS: Good morning Your Honor.

THE COURT: Good morning.

MR. BARRIOS-RAMOS: For the record, Attorney Jose Luis Barrios in representation of Asociacion de Maestros de Puerto Rico, and its Local Sindical, the exclusive representative of teachers in Puerto Rico.

Your Honor, we want to make the distinction in an abundance of caution since the prior speaker --

MR. SEGUI: You hear us, Your Honor?

THE COURT: Yes, I hear you now.

MR. SEGUI: Okay. Amy, where did you left --

COURT REPORTER: Good morning, Your Honor. We froze right after Counsel Barrios introduced himself.

THE COURT: All right. So I'll ask him to restart entirely. Thank you.

Mr. Barrios, can you --

MR. BARRIOS-RAMOS: Good morning.

THE COURT: Very good. Welcome back. You may have heard, the court reporter was unable to hear you from the time you introduced yourself, so we're restarting your clock, and would you restart your argument, please.

MR. BARRIOS-RAMOS: Yes, Your Honor. For the record, again, Attorney Jose Luis Barrios on behalf of Asociacion de Maestros de Puerto Rico, and its Local Sindical, the exclusive representative of teachers.

Your Honor, we'd like to start our argument with a quote taken from the TRS decision in the case of *Asociacion de Maestros v. Sistema Retiro de los Maestros*. At that time, the Court, and speaking on behalf of Justice Charneco stated, teachers who, with tremendous sacrifice and devotion, share the breadth of learning in the hope of building the Puerto Rico we all dream of deserve more than being steamrolled by clearly unreasonable laws. The path to our socioeconomic

progress cannot be paved at the expense of our teachers.

Your Honor, at that time, the Supreme Court of Puerto Rico was asked to rule on a very similar matter as the Board is proposing in these rulings of Act 53, and on the Plan of Adjustment. And the question was simple, was whether a cut, or how the Board calls it, a freeze, was constitutional or not.

AMPR wants to highlight that neither the Board, nor the supporters, the debt constitutional holders, want to acknowledge the ruling of the Supreme Court in that case when it defined what is a teacher's pension, and what it encompasses, and what a cut does to that pension, or what a cut is to that pension.

I want to bring to the Court's attention, at page two of the official translation of that ruling, the following quote. We hold that section two of Act 160 of 2013, which repeals the special laws that granted additional benefits, not consider, as part of the pension, and section 4.9 of that same statute, which eliminated certain benefits to TRS members who retired as of August 2014, are unconstitutional -- are constitutional. I'm sorry, Your Honor.

Those words were used by the Supreme Court to declare Law 160 unconstitutional, as to what meant a cut to their teacher's pension. As we express in our objection, Your Honor, a teacher's pension is not only what the teacher has

accrued at the point -- at a certain point, but is the combination of that accrual and the continued right of that teacher to accrue years of service until that teacher reaches an eligibility under the statute to then receive a perpetual monthly benefit.

THE COURT: Mr. Barrios, what is the ECF number where the English translation of the case is filed?

MR. BARRIOS-RAMOS: Your Honor, I will have to -- and please, I apologize, I don't have the ECF document with me, and I --

THE COURT: Thank you. So if you'll just supplementally file an informative motion that points me to the ECF filing, so that I am sure I am looking at the official translation that you are referring me to.

MR. BARRIOS-RAMOS: Yes, Your Honor.

THE COURT: Thank you.

MR. BARRIOS-RAMOS: I'm certain we have mentioned it, and I will verify if our pleading does attach the full translation, Your Honor.

THE COURT: Thank you so much.

MR. BARRIOS-RAMOS: Otherwise I will --

THE COURT: I appreciate that help. There are so many filings here.

MR. BARRIOS-RAMOS: Yes, Your Honor.

And, Your Honor, taking back the argument, in doing

so, the Puerto Rico Supreme Court declared, with no uncertainty, that the right to continue to accrue years of service is a right intrinsically attached to the teacher's pension.

In fact, the Court made no distinction between accrued and the right to future accrued pensions. The only distinction the Court made at that time was for those teachers that were not hired prior to enactment of Law 1060 (sic), and it was clear, since they had not been hired when the statute was enacted, then they didn't have a right to that defined benefit plan that the teachers hired before 2014 enjoyed.

But unlike the many arguments that we have heard today, there is no distinction by the highest court of Puerto Rico on whether a pension for a teacher is comprised of accrued or unaccrued. A defined benefit plan encompasses both, and any impairment to that right, whether accrued or to accrue in the future is a cut to their pension.

And that takes us to --

THE COURT: Before you go to the next point, the legislature here did use the specific term "accrued benefit" in conditioning what the Oversight Board can do, and, as I recall, that specific Puerto Rico Supreme Court case was in the context of a challenge under the Contract Clause of the Puerto Rico Constitution, which is not at issue in this proceeding, in this ruling request.

So is there no significance at all to the legislature's repeated use of the term "accrued benefit" in the statute?

MR. BARRIOS-RAMOS: Your Honor, our position is that the use of the accrued benefit in light of the mentioning on the statement of motives, does not -- is not mutually exclusive of the section of Act 53 that merely refers to zero cuts to pensions. There is, in Article 605, an express provision that merely referenced zero cuts to pensions without the attachment or the language that has been referred to as the accrued of the current active employees, Your Honor.

THE COURT: Thank you.

MR. BARRIOS-RAMOS: And that was one of the points that we brought in our objection, Your Honor.

So in order to define whether this Act 53, on that language, in fact prohibits the application to the Plan of Adjustment of the freeze, and, therefore, the nullification of that statute, there is a need to define what a teacher's pension is, and what it entails, and what would -- a cut to that pension also would entail. That's why we reference, Your Honor, the Supreme Court case, and the definition of -- that the Court rendered in that case regarding what is a pension for a teacher, and what a cut to that pension refers to.

The Board mentions that the right to accrue is merely an expectancy, that it's not -- and tries to also -- another

of the support is mentioned, the acquired rights, Your Honor, but the Supreme Court did not distinguish those two rights or separate them in issuing this ruling, which is specific to TRS, Your Honor.

Your Honor, we'd also like to clarify a point that the Board raised yet again in its reply briefing relating to Act 53, regarding the teachers' contractual right to define pension benefits. In its reply, at page six, the Board notes that because under Puerto Rico law, the Pension System Enabling Act and other legislation merely create contractual rights, not property rights, the Plan properly uses Bankruptcy Code section 365 to reject to -- contractual rights of participants to accrue pensions in the future until their retirement.

I believe the Court may have been left with a misimpression from Monday's argument regarding the teachers' right to defined pension benefits. The Court asked whether those rights are contractual, and they are. The Board says so as well, and we agree. These rights are not a gift. They're not implied. And unlike the Board argues, they're not optional, which Mr. Bienenstock seems to argue on Monday.

This contractual right, however, is not contained in a collective bargaining agreement, as we advanced, or other reading agreement. It's statutory, law 106, and provided by the Puerto Rico Constitution. The Supreme Court decision in

AMPR made that perfectly clear. Again, the Board knows this, and it says so in its reply.

Accordingly, because this contractual right is statutory, it is entirely appropriate for the legislature to protect this right by statute, which we contend it did through Act 53. As set forth in the objection, the legislation in Article 605 speaks to no cuts to pensions. It doesn't specify accrue, and, thus, it cannot be said with certainty that the legislation is not predicated on no freeze.

Further, in the versions of the bill which the Board advocated, some of them which are attached to its reply brief, there are specific statements to the effect that the legislation was not conditioned on there not being a freeze. And the government specifically removed that language before enactment.

Thus, the Board should not be trying to achieve through the judiciary in the Confirmation Order or in this ruling what it could not do by lobbying to the legislature. It is not the role of the judiciary to legislate, as the Board is asking here.

In all the discussions surrounding the enabling legislation over the past several months and years, the political leaders have been adamant that they would protect the teachers' defined benefit rights, and never agree to a freeze. Teachers voted against this specific alternative

under the Plan not once, but twice, based upon those repeated assurances by the political figures in the government, and those expressed by the organization which preceded me speaking right here today.

Unfortunately, Your Honor, it is the teachers who are caught in the crossfire between the political promises, who have been less than straight forward, and the Board, whose counsel told the Court on Monday that the teachers were getting the best treatment under the Plan, when in fact they're getting nothing, absolutely nothing, Your Honor, for their most sacred contractual right, the right to a perpetual pension.

And it is the teachers, Your Honor, who are at once Puerto Rico's most vulnerable, given their modest income, and the most critical to its future, as they hold the breadth of education of tomorrow's leaders, who are being singled out in this plan, who are the only public employees besides judges being impacted, Your Honor, and called upon to fund this restructuring.

Once again, in its reply to the objection raised by AMPR and the other objectors, the Board speaks to how critical the freeze is to the feasibility of the Plan. We again question that, Your Honor. Those estimates are nominal dollars that we mentioned before, are over 30 years, and they represent --

(Sound played.)

MR. BARRIOS-RAMOS: -- a mere one percent of the budgets of the Commonwealth for 30 years.

The only -- so we question, it's really the only way that Puerto Rico can emerge from these proceedings, if teachers, a subset of government employees, who in turn make only a subset of the island's obligations, sacrifice their only financial means of survival, so other bondholders and stakeholders can thrive? For us, Your Honor, AMPR, that defies reason.

Political leaders and the Board need to look to the good of Puerto Rico, not their own interests and those of stakeholders. And we call upon the Board and the political leaders to find a solution to avoid this freeze.

Your Honor, in summary, and in conclusion, we have also an opposition to the argument that the Board -- that the legislature does not legislate by omission, as the Board argues, since if we did in Act 53, it would have repealed section 2.6 of the Act 106, which ratifies the right of teachers and judges to continue to accrue benefits into the future.

If the Court has any other questions, Your Honor, I will be more than pleased to address them at this time.

THE COURT: Thank you. I have no further questions for you, Mr. Barrios. Thank you.

MR. BARRIOS-RAMOS: Thank you.

THE COURT: The next speaker is Mr. Indiano for the APJ.

MR. INDIANO: Good morning, Your Honor. Can you hear me okay?

THE COURT: Yes. Good morning, Mr. Indiano.

MR. INDIANO: I am here this morning on behalf of the active judges through the APJ to discuss judicial independence, and why no compensation regarding the judges should be diminished in any way, be it by lowering their monthly benefits, COLA, or the freeze.

We join what the teachers have said previously regarding Law 53, and I will not address that here. I do see issues for the Court to --

THE COURT: Mr. --

MR. INDIANO: Yes.

THE COURT: Remember, as I said, this argument today is about the interpretation of Law 53, not about more general fundamental objections to the Plan provisions changing benefits. I'm interested here in interpreting Law 53, whether it supports the rulings that the Oversight Board has requested.

MR. INDIANO: Well, Your Honor --

THE COURT: I need to be clear --

MR. INDIANO: -- I heard what you mentioned at the

beginning of the hearing, but we filed an objection specifically addressing the issue of judicial independence and how regardless of how --

THE COURT: That objection was not responsive to the call for oral argument on the rulings --

MR. INDIANO: Well, I knew that --

THE COURT: -- so --

MR. INDIANO: -- the Board did address our position, and misinterpreted it, so I don't see how we can't be heard on those issues at this time, Your Honor. I understand you want to hear Law 53. I don't have anything to add to what the teachers' groups have already said, so if you're going to deny our ability to speak on behalf of the judges with respect to judicial independence and how Law 53, regardless of how the Court interprets it, will not be decisive as to whether they should be cut, the COLAs, and freeze, I have to respect what Your Honor tells me to do.

But we are here, ready, and able to speak to that issue, because that issue is critical to what's going to happen going forward. And this issue has been in front of the Court before on various occasions, and I would like to address it in my time. But if Your Honor is going to deny that now, I have to respect what Your Honor says.

THE COURT: Well, as you say, the issue has been raised before the Court on many occasions. The issue wasn't

framed in an objection to the Plan, which were due some time ago. I will permit you to address the Court as concisely as you deem prudent, focusing on what you contend is a mischaracterization of your position in the response of the Oversight Board.

MR. INDIANO: Now, briefly, just to set the stage, and then I'll go right to where I think is the mischaracterization, if the Court will permit me to do that.

THE COURT: Yes.

MR. INDIANO: And there's a long series of -- not long, but a series of arguments that we've already put forth as to the source of judicial independence coming from the United States Constitution, coming from the history of how judicial independence became critical to Founding Fathers as they established the Constitution.

Then I do have to just briefly go to the point that the Congress, acting through Law 600, in 1950, created a Government in Puerto Rico that required a Republican form of government. That implicitly demands that judicial independence be part of it.

That is the source, Your Honor, of our objection, and judicial independence. The mischaracterization, I want to go right to that, by the Board in I think paragraphs 60 and 61, or in the vicinity, of their midnight filing from Monday, goes to the --

THE COURT: Mr. Indiano.

MR. INDIANO: -- are saying that we are --

THE COURT: Mr. Indiano, there was a glitch in the transmission.

MR. INDIANO: Yes.

THE COURT: So if you would go back to your sentence that began, the mischaracterization of the Board in its filing, and continue again from there, that would be helpful.

MR. INDIANO: No problem. No problem. I'll go directly to what I consider a mischaracterization, and what the Court has said in their midnight filing of Monday in I think paragraphs 60, 61 --

THE COURT: We have --

MR. INDIANO: -- at least in that area of --

THE COURT: I'm sorry. We lost transmission again.

MR. INDIANO: -- the brief --

THE COURT: Please pause for just a moment, and we're pausing your clock as well.

Puerto Rico, are you having an issue again with transmissions?

COURT REPORTER: Your Honor, your transmission is fine, but counsel's transmission was breaking up where it was also breaking up for you.

THE COURT: It was breaking up for me and also

breaking up for you.

So we will ask counsel to go back to that portion of his argument again, and hope that the transmission works better. So, Mr. Indiano --

MR. INDIANO: Should I try again?

THE COURT: Yes, please.

MR. INDIANO: Okay. And this is reminiscent of the stay hearing, Your Honor. I don't know if you remember, but we had several technical difficulties trying to get through that one. But beyond this, let me get back to what I believe is a mischaracterization of what our argument has always been from the beginning.

The Board has suggested, in paragraphs I think 60 and 61, or in that area of their brief, that we are saying that PROMESA can preempt the Constitution of Puerto Rico, that's the source of our power for judicial independence. It is not. That is somewhat of a downstream argument I would suggest, Your Honor, that they are talking about or characterizing our argument as one that finds the power of judicial independence in the Puerto Rico Constitution. That's not what we're talking about.

Judicial independence come from the Federal Government. There's only one a sovereign here under *Sanchez Valle*. That's the Federal Government. The Federal Government, through Law 600, in 1950, created Puerto Rico, and

required that there be a Republican form of government, which necessarily implicated judicial independence.

We are not saying that the source of the judicial independence comes from the Puerto Rico Cons --

-- the structure of the government and the requirements of judicial independence that comes from --

COURT REPORTER: Your Honor, I'm sorry, can you hear me? This is the court reporter.

THE COURT: Yes, we can hear you, Ms. Reporter.

COURT REPORTER: It froze again. The last I heard was "required that there be a Republican form of government, which necessarily implicated" -- and then we froze until the last couple words that counsel said.

THE COURT: So, Mr. Indiano, I believe that was your sentence which said, the Republican form of government, which necessarily implicates judicial independence. Can you please go back and restart from that point?

MR. INDIANO: I'll try, but I'm not reading from a text. I'm responding specifically, Your Honor. So let me ask the question, Your Honor, have you been hearing me, just so I know?

THE COURT: Yes, I have been hearing you --

MR. INDIANO: Okay.

THE COURT: -- and I let you know when I don't hear you.

MR. INDIANO: Okay.

THE COURT: But it's also important that we have a coherent transcript.

MR. INDIANO: I agree with that.

The problem with the argument that they set up is they're setting up a straw man, because every time they talk about us, the Judge is saying that if the Puerto Rico Constitution is the source of judicial independence, then they say, well, if that was true, we have to throw out everything that PROMESA is trying to do in the restructuring. And that is not what we're doing.

The, argument as I was saying, is an upstream argument that stems from Law 600, a federal law that was created to create a Republican form of government in Puerto Rico that implicates judicial independence. And that is the source from which we derive our argument for judicial independence for Puerto Rico.

The Board also keeps trying to take our discussion of the *Brau* case to suggest that we are saying that the *Brau* case is the source of judicial independence for the Court to decide this issue. It is not. It's merely illustrative of how the Puerto Rico court, Supreme Court, handled that issue when it came before it. But once again, the source of judicial independence is not the Federal -- is not the Puerto Rico Constitution, is not derived from *Brau*, but is from Law 600.

And there's nothing in PROMESA, as powerful as it is, as widespread as it is that was ever designed to overturn, repeal, modify the basic tenant of Puerto Rico's Government, which is a Republican form of government, with judicial independence clearly embedded in that, as you can see from the history of the United States Constitution, the kind of judicial cases, and 200 years of case law.

I have to mention, Your Honor, one thing, and this will not endear me to the teachers' group I'm sure, but I want to at least set it out. There are declarations I know that set forth the Plan will be ineffective if the freeze, and the COLA for both the TRS and the JRS are not implemented.

The JRS, we're talking about with the active judges, a little bit more than 300 active judges, and a dwindling number of course of retired judges. By attrition, it will be eliminated over time. We are such a small group of people that I don't see how any declarant can set forth something that would show that this plan is unable to be successful if the JRS is segregated out based on judicial independence.

And I have met with Mr. Bienenstock before, and members of his firm, and we have discussed this. And I do not pretend to speak for them at all, but I think that most legal observers, and legal historians, I think in their heart of hearts they cannot conceive that Puerto Rico does have judicial independence in its courts. I think the problem has

always been that the Board has been reluctant to try to segregate out the judges to make them look like they're something special and being treated differently, or that the judges are some kind of group of prima donnas, or untouchable, but that's both wholly unfair and unappreciative of the role of the judiciary as an independent branch of the government, with judicial independence for all the reasons that the framers set forth.

Finally, Judge, Your Honor, I would just say that it's probably -- I know it's been difficult for me to get into this argument given the ruling of the Court, and I do appreciate your patience in at least hearing the judges. You know, it's been a privilege for me to represent them. They cannot speak for themselves. They never really can when they're attacked, disparaged, or economically effected, as this plan will do.

I hope that you will consider their plights and their rights to a truly independent judiciary, because that is one judiciary that Puerto Rico badly needs in order to succeed in going forward under whatever plan is eventually confirmed by this Court.

Thank you, Your Honor.

THE COURT: Thank you, Mr. Indiano.

The next speaker is Mr. Mendoza-Mendez for the AJJPR.

Good morning, Mr. Mendoza-Mendez. I will again say that my primary focus this morning is on interpretation of Act 53, which was the subject of the motion, and so I would urge you to be as pertinent as possible to that focus in your remarks.

MR. MENDOZA-MENDEZ: May it please the Court. Good morning, Your Honor.

THE COURT: Good morning. Is it possible for you to speak a bit louder, or get closer to your microphone? Your voice is very low.

MR. MENDOZA-MENDEZ: How about now, Your Honor?

THE COURT: That is a little better. Just, you know, pretend you're at the opera, so that we can all hear you clearly. Thank you.

MR. MENDOZA-MENDEZ: Thank you, Your Honor.

Good morning. My name is Enrique Jose Mendoza-Mendez. I represent the Asociacion de Jubilados de la Judicatura de Puerto Rico, and the Honorable -- and the Honorable Hector Urgell-Cuebas, retired appellate judge of the Courts of Appeal of Puerto Rico. We thank the Court for the opportunity to address it on this issue.

I don't want to repeat myself, and I should not. And I will go straight to our point concerning the matter on the Agenda concerning essentially Act 53. Section 104 of Act 53, in pertinent part, provides that the legislative assembly

authorizes the issuance of General Obligation Bonds subject to the Board filing an amended plan for confirmation by the Court.

Certainly there will be no cuts to current pay of retirees. The Oversight Board submits that the language in Act 53 does not mean the elimination of the cancellation of the cost of living allowance, and that point has been argued by both sides. This morning we will not repeat ourself. The Board's interpretation might or might not be. The Court will rule on that. Our position is very limited, very, very limited. And it is that it cannot be, it cannot be, as to the retired judges are concerned. And my argument is similar to Mr. Indiano's argument, but bear with me, because we will frame it in a different form. Form and substance is the same.

Law 600 establishes a Republican form of government for Puerto Rico, and creates three branches of government. One of them, the judicial branch. That law was approved by Congress. That law was approved by the President. A Constitution for Puerto Rico was enacted as to it, and was accepted by the Federal Government. Meaning that certainly the judges, as members of the judicial branch, have a special place, and they have a special place not because they are the privileged ones. They have a special place, because they represent a branch of government that has a special place.

Then we come to PROMESA, and we posit that PROMESA does not trump Law 600. So we posit that the Court has to harmonize both laws. It has to harmonize the judicial independence; it has to harmonize the rights of the judges; and it has to harmonize getting Puerto Rico out of its bankruptcy. And the way to do that is to preserve the vested rights that the retired judges have.

We represent judges who are already in retirement, and the cost-of-living allowance is part and parcel of that constitutional guaranteed pension rights that was given to them, that was -- that enticed them to select a judicial career, and that was approved by the Federal Government. So bottom line, plain and simple, the retired judges, at around 400, it is a class that, by law of nature, diminishes in time. And plain and simple, plain and simple, to allow the cost of living allowance moving forward as part and parcel of their pension rights does not make this plan unconfirmable. Plain and simple, Your Honor.

The task to harmonize Law 600 with PROMESA, and the byproduct of that process, is why we move the Court to construe that Law 53, as it refers to the retired judges, should include and should not be banned from future cost-of-living allowances.

Your Honor, I was plain and simple, as I promised. If the Court has any questions, we will gladly address them.

THE COURT: Thank you, Mr. Mendoza-Mendez. You were quite clear. Thank you for being concise as well.

I will now turn to Mr. DeChiara for the SEIU and UAW.

MR. DECHIARA: Thank you, Your Honor. Peter DeChiara, from the law firm of Cohen, Weiss & Simon, LLC, for the UAW and SEIU.

The UAW and SEIU did not object to the Oversight Board's requested rulings regarding Act 53, as those requested rulings were defined in the Court's November 2nd notice at docket entry no. 19017-1. Those requested rulings sought to nail down what conditions Act 53 placed on the authorization of new Commonwealth bond debt. However, the rulings the Oversight Board requested in its November 15th Omnibus Reply went beyond simply determining those Act 53 conditions.

In particular, of concern to UAW and SEIU, the Oversight Board requested a ruling approving paragraph 62 of the proposed Confirmation Order. As Your Honor may recall, during Monday's oral argument, I explained that SEIU and UAW object to paragraph 62 to the extent it would restrict the Commonwealth for ten years from increasing defined benefit pension payments for ERS participants, other than through a COLA.

The Oversight Board now, in the guise of seeking rulings on Act 53, asked the Court to approve paragraph 62.

Without saying so in their Act 53 papers, the Oversight Board is in effect asking the Court to overrule the UAW-SEIU paragraph 62 objection. The Court should not do so.

The Act 53 requested rulings, as defined by the Court's November 2nd notice, had nothing to do with future increases to defined benefit pension payments for ERS participants other than via COLAs, and Mr. Bienenstock in his remarks this morning made no serious argument that they did. In fact, ERS participants received no notice that the Oversight Board, through its Act 53 requested rulings, would seek to restrict increases to their defined benefit pension payments by means other than elimination of COLA.

Thus, if the Court grants the Oversight Board's urgent motion on Act 53, it should make clear that it is only granting the requested rulings defined in the Court's November 2nd notice, and it is not approving paragraph 62, at least to the extent that paragraph 62 would restrict future increases to defined benefit pension payments to ERS participants by means other than through COLAs.

THE COURT: Mr. DeChiara, just to be clear, so you are particularly concerned about this in the event that I were to rule separately on the Act 53 issues, as opposed to incorporating rulings regarding the Act 53 issues with my other confirmation rulings that, you know, would of course evaluate and take into account the question of whether

paragraph 62 should be in the final order or not?

MR. DECHIARA: That's correct, Your Honor. We don't want the Court to sweep into the Act 53 rulings the paragraph 62 issue.

THE COURT: Thank you.

MR. DECHIARA: Mr. Bienenstock really used his remarks today not to seriously defend the Oversight Board's use of its Act 53 requested rulings as a vehicle to obtain Court approval of paragraph 62, but, rather, as an opportunity for another bite at the apple following his remarks at Monday's oral argument opposing UAW and SEIU's challenge to paragraph 62. And his remarks today were no more successful than they were on Monday.

First, Mr. Bienenstock asserted that PROMESA allows the Oversight Board to modify the Plan of Adjustment at any time. We dispute that assertion, but even if it were accurate, it's irrelevant.

First, whether it has the right to do so or not, the Oversight Board has not amended the Plan of Adjustment regarding the treatment of ERS participants. Second, UAW and SEIU do not oppose the treatment of ERS participants in the Plan. Indeed, we object to paragraph 62 precisely because it is set forth -- it sets forth a restriction that is not in the Plan, but was added to the Confirmation Order. And only added at the 11th hour.

Next, Mr. Bienenstock points out that ERS classes voted against the Plan of Adjustment, so it doesn't matter if they are adversely and materially affected by paragraph 62. This assertion too is irrelevant. The Plan of Adjustment, the treatment of ERS participants hasn't been changed. So we don't argue, we don't contend that the ERS participants were denied a right to vote on any such change.

When UAW and SEIU argue that ERS participants will be adversely and materially affected by paragraph 62's restriction on future increases to their DB benefits, we're not concerned about how they voted on the Plan. We're concerned that ERS participants received no notice of paragraph 62, and, thus, had no chance to object to it in court.

Due process demands that a Court give a party adversely affected by a court order notice and a chance to object before the court order issues. Paragraph 62 was added well after the Disclosure Statement went out, and long after the objection deadline had passed. And its inclusion now would be a due process violation.

Mr. Bienenstock notes that paragraph 62 only restricts the government, but he admits, as he must, that the restriction on future increases to their DB benefits affects ERS participants, and they're not effected in some amorphous or abstract way. Paragraph 62 restricts their chance of

getting an increase to their modest pensions. That affects people's real lives in a real way.

Mr. Bienenstock also suggested that perhaps ERS participants would lack standing to object to paragraph 62. Now, this is obviously incorrect. ERS participants would certainly have standing, as creditors, as parties in interest, or they would have had standing to object to paragraph 62 if they had received notice of it, but they did not receive notice of it.

Finally, Mr. Bienenstock tries to play down paragraph 62, suggesting it's not really a restriction, because the Commonwealth can seek judicial relief from the restriction. But a restriction is still a restriction, even if there's a possibility of judicial relief from it. If I'm sent to jail, I'm adversely effected even if I have a right to appeal my jail sentence.

In any event, Mr. Bienenstock on Monday called the safety valve in paragraph 62 -- it's not much of a safety valve. It only kicks in after the Oversight Board terminates, and who knows when that will be, and only if the Commonwealth meets every one of six separate, vaguely defined criteria. That any relief would ever be available under this so-called safety valve is highly uncertain.

As I explained on Monday, PROMESA already gives the Oversight Board the means to challenge Commonwealth action

that it deems contrary to the fiscal plan and the budget. It doesn't need paragraph 62.

In sum, the Court should strike paragraph 62 to the extent it would restrict the Commonwealth for ten years from increasing defined benefit payments for ERS participants except via COLAs. Thank you very much for giving me the opportunity to make these remarks, Your Honor.

THE COURT: Thank you, Mr. DeChiara.

So now we will return to the Oversight Board's counsel for the 15-minute reply argument.

MR. BIENENSTOCK: Thank you, Your Honor. Martin Bienenstock of Proskauer Rose, LLP, for the Oversight Board, as Title III representative.

If possible, I'm going to leave some time for Mr. Mungovan, because I'm going to try also to be as succinct as possible on the issues that do not go directly to the statutory interpretation issue, which we believe was the Court's intent to be the subject of this morning's oral argument.

The teachers argued that legislation is necessary. Your Honor, the shortest response I can give to that is this goes to a law of nature. When a debtor, whether it be an individual, a municipality, or any other debtor is in distress and has insufficient funds, I think it jumps off the page that it doesn't need permission to default. It has to default.

And the Bankruptcy Code and PROMESA recognize that when you don't have enough money, you default, and it deals with the consequences of that default.

So for the teachers, or any of the other litigants here to argue that we need legislative permission locally to default on defined benefit plans and COLAs is simply contrary to PROMESA, the Bankruptcy Code, and, most importantly, the law of nature. If you don't have the money, you can't do it.

The argument that the Oversight Board cannot go beyond its tenure in protecting the Commonwealth is simply wrong. The Oversight Board's tenure ends after four years of balanced budgets, which presumably and hopefully will occur after confirmations of the relevant debtors.

But any plan proponent has to provide for the feasibility of the plan throughout the plan's term. And here the Oversight Board is the plan proponent, and can't look at its tenure, which might be only four years longer. It has to look at the term of the Plan, which goes for decades, because of the lives of the retirees, and the time it will take to pay off the general obligation and other debt.

In terms of -- we understand the teachers' point when they say the Board is unelected. We all know what PROMESA is and how we got here. But, ironically, the teachers' position is if they're insisting on the defined benefit plan, then their position is they don't want a plan right now. The

Commonwealth stays under a cloud of debt, and the timeline on the Board's four years of balanced budgets doesn't even start to run, so the Board would be here longer.

Mr. Barrios Ramos started by saying the economic problems can't be solved at the expense of the teachers. I want to emphasize, in response to the teachers, Mr. Ramos, and everyone else who's spoken before me this morning, Your Honor, the Board accepts the sincerity and the depth of what they are saying. There is no joy in allocating losses. And even though retirees are being allocated lesser losses than anyone else in this case, there is no joy in doing it.

And it doesn't help decide the case, but it's just a fact. And it stems from the law of nature I mentioned. When you don't have enough resources, you have to allocate them, and that means a sharing of losses.

Your Honor mentioned earlier that the 2014 Puerto Rico Supreme Court case turned on the Contract Clause, so I won't get into that.

There was a statement that the teachers are getting nothing under the Plan, and I just can't leave that unanswered, Your Honor. They're getting their full accrued pensions, which makes them the best off under the Plan of anyone.

Mr. Indiano and I, as Mr. Indiano mentioned, go way back, a lot of sincere conversations. I will only say that

his point this morning, that it's Law 600 that they're concerned about in creating a Republican form of government and judicial independence is not connected to the object of this morning.

One cannot make the argument, and they certainly haven't made it or explained it, that Republican form of government and judicial independence is a function of whether judges get cost-of-living adjustments that no one else is getting. They just don't connect.

That said, here again, the objection of Mr. Indiano was sincere. There is no joy, there's a lot of sorrow in allocating losses to everyone, most especially the judges, but the argument doesn't add up in terms of Republican form of government and independence being a function of cost-of-living adjustments.

In terms of the SEIU and UAW responses, Your Honor, as I understand what they're saying, initially they're saying the elimination of the defined benefit plan is fine with them. They just don't want any provision in the Confirmation Order enforcing it. I think that their position refutes itself. This was -- as I think everyone even agrees to and does not dispute, the key element in allowing the Board to prosecute this plan was legislative authorization of the debt, without requiring an elimination of the freeze of the defined benefit plans. To suggest that that could be the most important thing

in the world, but we have to have an order that allows the defined benefit plan to be reenacted the next day after the effective date of confirmation is nonsense. We have to protect the feasibility of our plan.

And I think this morning the SEIU and UAW conceded that what -- they don't like the linkage of paragraph 62 to the rulings on Act 53, but as I explained earlier, paragraph 62 stands on its own. I would also say that in terms of -- in terms of the statutory interpretation of Act 53, it should be noted that the legislature is not here arguing that the Oversight Board is wrong, and they are certainly not bashful.

The UAW and SEIU further argue that there's a lack of due process, et cetera, and that just has to be put to rest, Your Honor. The case, the confirmation hearing, the Plan, the subject matter has been noticed to all parties in interest electronically, by mail where possible, and through publication. Plans are modified throughout confirmation hearings. Courts usually want those modifications, because they often symbolize new agreements being forged. And this was a new agreement with the legislature. Everyone is on notice of this. There's no lack of due process.

The Court has the absolute right to modify the Plan, which leads to modifying the Confirmation Order, and if what the SEIU and UAW are saying is we can put paragraph 62 in the Plan and then it will be a plan modification, fine. We're

happy to do that for them. We'll also keep it in our proposed Confirmation Order.

As far as the attempt by the SEIU and UAW to say our safety valve isn't really a safety valve, Your Honor, the provisions only require that they convince the Court that a new defined benefit plan is needed, affordable, and won't create risks of default on the other plan modifications. That's hardly something that is impossible to meet. It's common sense. It's reasonable. It's good business sense. And that's what the Board is supposed to assure, that the day after confirmation, or four years after confirmation of a plan that lasts 40 years, that things won't happen to jeopardize all the work that has gone into righting the ship, creating fiscal responsibility, by all parties, the government, unions, employees, creditors, and the Oversight Board. That's all the Oversight Board wants to do, is carry out its mandate to afford fiscal responsibility and market access.

Your Honor, if my partner Mr. Mungovan might make the remaining points, I think we have a few more minutes.

THE COURT: Yes. Thank you, Mr. Bienenstock.

MR. BIENENSTOCK: Thank you.

MR. MUNGOVAN: Good morning again, Your Honor. Timothy Mungovan, Proskauer Rose, on behalf of the Oversight Board. I believe that I have just under five minutes remaining. I'll try to come right under that time allotment.

I'd like to make two basic points, Your Honor, both with respect to comments by Ms. Mendez-Colberg I believe, opening counsel for one of the teachers' associations. She specifically invoked the statutory history or the legislative history of Act 53, and suggested that it supported the objectors' interpretation of Act 53.

I would suggest, as an overview, the legislative history is laid out in the Board's response papers filed on Monday night, easily and substantially establishes the ruling that the Board is seeking in that the act does not prohibit the imposition of the freeze and the elimination of the COLA under Act 53.

Two basic points in that regard. First, counsel, sister counsel invoked a clarifying parenthetical in HB-1003, which was the bill that preceded the enactment of Act 53. That parenthetical actually came from a letter that the Board had sent to the legislature, and the Court has that letter. It was submitted as Exhibit A to the Board's informative motion to the Court on October 22, which feels like a long time ago. And it appears at document no. 18681. 18681. And I'm specifically looking at page three of four, using the ECF tracking.

And the first sentence, the first numbered sentence in the Board's letter that's on that page three of four in the ECF count actually found its way into Act 53. A portion of it

did. And what the Board indicated is that the Board would not oppose legislation that, quote, requires that the Plan submitted for confirmation be amended to provide for no cuts to the accrued pensions of retired public employees and current employees of the Commonwealth, unless required by the U.S. District Court for the District of Puerto Rico.

And then here's the parenthetical that's at issue, (but to be clear, this requirement does not extend to the Plan's freeze of the TRS and JRS pensions, or the elimination of any remaining cost-of-living adjustments.)

Ms. Mendez-Colberg suggests that the elimination of that parenthetical suggests that in some way the "no cuts to pensions" language somehow encompasses both the freeze and the COLA. Logically, that can't be the case, because all that the parenthetical is doing is indicating that the language where the Board has indicated that it's willing to eliminate cuts to pensions doesn't include the freeze or the COLAs. The legislature knew this.

The second point that I'd like to make in my remaining minute and a half relates to the prior legislative history that sister counsel did not mention, but is included in our brief and referenced. And that's specifically at Exhibit D to the Board's response of Monday night, and Exhibit B is document no. 19249. And that's HB-1003, dated October 6, 2021. And I'd just like to point the Court to some language

which, if enacted, would certainly have encompassed the freeze and the elimination of the COLA.

The first example appears on page 115 of 231, at document 19249. That's 115 of 231. And it provides in pertinent part, it is extremely clear that the public policy of this legislature is zero cuts to the retirees. The public policy of the legislature is to recognize as a debt of the Government of the Commonwealth that pensions -- according to the rule of law at the time this law is enacted. Therefore, there will be no cut, reduction, or alteration to the pensions that the retirees receive from the retirement system of the public employees and the judiciary.

The second example, and it's substantially broader than the language that appears in the current act of Act 53, appears on page 143 of 231. Again, this is document no. 19249. It provides as follows: Provided, however, that the severability of this article will not be applicable to Article 605, it is the express and unequivocal will of this legislature that the courts not enforce the restructuring transactions, and their respective authorizations in Articles 104, 201, and 301, if the suspensive condition is left without effect, invalidated, or declared unconstitutional, to avoid any cut or freeze of pensions to government employees in the Adjustment Plan or --

(Sound played.)

MR. MUNGOVAN: -- provisions of Article 102 or 105 of this law.

I'm out of time, Your Honor, but may I make a final statement with respect to that provision?

THE COURT: Yes, you may.

MR. MUNGOVAN: Thank you.

The point of that legislative history, Your Honor, is if that law, if that bill was the law that was enacted, and that language referencing the freeze was included in the law, of course Act 53 would have prohibited the imposition of the freeze. That language was known to the legislature. It could have included that language, and it chose not to. And it chose not to because the Board had made clear at the emergency status conference on October 25 that it could not accept such language, and that was consistent with the position that the Board placed in its letter dated October 14, 2021, which I read to the Court a few minutes ago.

And for that reason, Your Honor, the objection should be rejected, the Board's requested rulings should be granted, and entered in the record of the case. Thank you.

THE COURT: Thank you, Mr. Mungovan.

We will take our morning break in just a moment, but I would also like to say to those who will be coming up to argue objections to the third revised proposed Order, I have reviewed the submissions, and I ask you to focus on any issues

that are specific to the language of the Order, rather than mere preservation of objections to plan provisions that are reflected in the Order, since objections to plan provisions have already been briefed and argued.

So to put it another way, if there is something in the Order that you believe is inconsistent with, or not in the plan, or something in the wording of the Order, I would like you to focus, and to focus me on that issue.

I also would like the Oversight Board, in its remarks, to explain the scope of the third sentence of paragraph 3(B) of the Order, having to do with preemption. It is the sentence that reads, quote, pursuant to PROMESA section four, to the extent not previously ruled preempted pursuant to an Order of the Title III Court, all laws (or such portions thereof) of the Commonwealth of Puerto Rico, other than budgets certified by the Oversight Board inconsistent with PROMESA, have been preempted.

And I am particularly interested in the Board's explanation of what the antecedent of the parenthetical reference to such portions is, and whether the Board can or will give any more content to the notion of inconsistency with PROMESA, which is a definitional element of the universe of laws that, as I understand it, are referred to in that particular sentence. So you have fair warning.

Thank you all. We will resume at 11:00 AM Eastern

Time, which is 12:00 Atlantic Standard Time.

(At 11:43 AM, recess taken.)

(At 11:55 AM, proceedings reconvened.)

THE COURT: Good morning. We're back in session.

So now I'm ready to hear arguments with respect to objections to the third revised proposed Order confirming the Plan, and the first speaker is Mr. Rosen for the Oversight Board, who's been allotted 30 minutes.

MR. ROSEN: Thank you very much, Your Honor. Brian Rosen, Proskauer Rose, on behalf of the Oversight Board.

Your Honor, you stole a great deal of my thunder with your comments just before the break, because I was going to note, and I'll say it again, that many of the objections that were filed primarily reiterated many of their comments with respect to the overall confirmation of the Plan of Adjustment. Most notably, with respect to the takings claim and the nondischargeability objections that have been interposed.

But, Your Honor, just for the sake of completeness, what I'd like to do is just briefly go through all of them. I'll note those, and we can just move on very quickly. Your Honor, and I'll do them in the chronological order in which they were filed.

The first was filed by unions, the UAW and the SEIU, and they likewise incorporated their prior objections to the Plan and the earlier proposed Confirmation Order, but they

also raised two distinct points. The first, Your Honor, was with respect to the collective bargaining agreements, and, notably, what they focused on, the fact was that the Plan contained in it a provision regarding collective bargaining agreements and how they would run through, if you will -- they would not be assumed, nor would they be rejected. And they asked specifically for an inclusion in the Plan for a corresponding provision.

So, Your Honor, we have included a similar provision in the Plan with respect to that. I just wanted to -- specifically, Your Honor, in paragraph 29, we have included language that mirrors the identical language that is in the Plan. For the record, except as provided in Articles 50 and 51 of the Plan, none of the debtors' collective bargaining agreements shall be treated as executory contracts, and none shall be assumed or rejected or otherwise treated pursuant to the Plan, but shall remain in effect, subject in all instances to Puerto Rico law and Articles 50 and 51 of the Plan regarding the payment and ongoing treatment of pension and related claims obligations.

They also had another comment, Your Honor. Essentially, it's beating the same drum that's been beaten so many times throughout the case. Specifically, it goes back to the ACR Order and the grievance claims. And notably, Your Honor, the question was are the -- would you please state once

and for all in the Plan that the ACR Order will remain in effect, notwithstanding that it says that in the Plan, and would you say that the grievance claims which will be subject to the ACR Order will be included and will ride through, and, once recognized, will be treated in the ordinary course.

Your Honor, in paragraph 42 of the proposed Confirmation Order, we will add language which expressly states that, and saying, without in any way limiting the foregoing, or the terms and provisions of the Plan, or the ACR Order to the extent the claims subject to the terms and provisions of the ACR Order, including without limitation the grievance claims subject to the provisions of collective bargaining agreements, remain subject to the ACR Order, upon resolution thereof such claims shall be satisfied by the debtors in the ordinary course.

Your Honor, the next two objections that were filed were by PFZ Properties and Finca Matilde. Those two, Your Honor, dealt exclusively with the takings claims arguments, and there's nothing to respond to there.

The fourth pleading that was filed was by Assured Guaranty, Your Honor. That was merely a reservation of rights, and no suggestions with respect to changes in the Confirmation Order were made.

The fifth was filed by Mr. Peter Hein. Your Honor, as you have requested, Mr. Hein and I spent a considerable

amount of time on the phone yesterday going through his concerns about not only the Plan, but also the Confirmation Order. And of course while Mr. Hein preserves all of his respective arguments to confirmation of the Plan, we did talk about two that he had expressed specifically to the Court and to me on Monday.

First, Your Honor, they were with respect to sections 92.9 and 92.11 of the Plan dealing with the Bar Order and with respect to a supplemental injunction. And so, Your Honor, I understand Mr. Hein's concern, although I don't really believe it's necessary, because so many other times in the Plan we had referenced that there would not be any third-party, nonconsensual releases, but notwithstanding that, Your Honor, we will be adding to the Plan in those two sections, as well as to paragraphs 59, 60, 64, and 65 of the proposed Order, language along the lines of, without prejudice to the exculpation rights set forth in section 92.7 of the Plan and the Confirmation Order, nothing contained in the Plan or this Order is intended, nor shall it be construed to be a nonconsensual third-party release of the PSA creditors, AFSCME, and other respective related persons by creditors of the debtors.

This is already in the Plan, Your Honor. We're just repeating it in the various other sections, because Mr. Hein had expressed a new concern that there might have been an

opening for someone to argue it there.

Mr. Hein also asked, and it's not a plan provision, Your Honor, but I will note it -- he expressed a concern in 92.20. This was the provision of the Plan that refers to the immediate binding effect. And if Your Honor will recall, and Mr. Hein acknowledged the other day that we had removed from the proposed Confirmation Order the waiver of the 14-day stay that's set forth in Bankruptcy Rule 3020, but he was concerned about some introductory language in 92.20 of the Plan about that. And if you recall, Your Honor, I mentioned that immediate binding effect was only going to be upon the occurrence of the effective date.

Nevertheless, Your Honor, after speaking with Mr. Hein, and hearing his concern yet again, we have agreed that in the Plan we will remove that introductory language, so that there is no question that, in fact, there would not be a waiver of the 14-day stay. As I said, Your Honor, the balance of Mr. Hein's objections go to the Plan, and I will not address those.

Your Honor, the credit unions, which was the sixth pleading filed, they substantially reassert the general takings claim and nondischargeability arguments to the Plan that they have spoken about so much before. The one point that they did make the other day, Your Honor, and I promised the Court I would look into this, was with respect to COSSEC,

C-O-S-S-E-C, which is a public corporation regarding the supervision and insurance of cooperatives.

And specifically, Your Honor, Counsel, I believe it was Mr. Almeida, had asked that we would include COSSEC as one of those instrumentalities that would be expressly carved out from any sort of release. We have discussed this issue with the Oversight Board. We agree that it is a separate instrumentality, Your Honor, and we will include that in one of the carved out parties, so that to the extent that there is something left for the cooperativas to pursue against COSSEC, they may be free to do so.

The seventh pleading that was filed, Your Honor, was by the Unsecured Creditors Committee. That was merely a reservation of rights, and it was noted in there that there were some ongoing documentation issues that had to be finalized. I can report that, in fact, those documentation issues have been resolved, and we will be filing, as part of the updated plan supplement, a revised avoidance actions trust agreement that takes into account that lingering issue.

The eighth pleading that was filed, Your Honor, was by Amador. That was, again, a takings claim, nondischargeability pleading, and we will leave that based upon the arguments that have already been raised.

The next pleading, the ninth, was by the Retiree Committee, Your Honor, and that was a reservation of rights as

well. And the Retiree Committee noted that they thought that the pension reserve trust guidelines had been finalized, and they were wondering why it had not been filed with the Court.

Your Honor, with the passage of Act 53, and the removal of the monthly benefit modifications from the Plan, the guidelines on which the parties have previously reached agreement, specifically the Oversight Board, the Retiree Committee, AFSCME, and AAFAF, they had to be revised to eliminate the oversight or the pension cuts, and the benefit restoration, as well as concepts that were no longer relevant.

The parties have been passing back and forth a markup of those guidelines, Your Honor. I understand there will be further discussions today regarding that, and hopefully that will be done so that can be included in the plan supplement that I referred to previously, Your Honor. So that would take care of, I believe, the comments by the Retiree Committee.

There was a 10th pleading filed, Your Honor, last night, about 24 hours after the Court-imposed deadline for filing comments with respect to the Confirmation Order, but this was by Suiza, Your Honor, one of the dairy producers. But it actually provides nothing with respect to the Confirmation Order. It merely, again, takes up the issues associated with the takings claims.

Your Honor, those are all of the formal pleadings

that were filed, but I would like to note, Your Honor, that notwithstanding that, we've been having many conversations with many parties informally, and to get their comments to the Plan. And if you don't mind, Your Honor, I just would like to run through those as well, because some of the parties have asked us to make the representations on the record. So I will do that now.

Specifically, paragraph 23, that is just a note that we had to correct and conform the provision of that with respect to the pension reserve trust funding. There was, in the Plan itself, an Article 83 of the Plan that referenced to the ninth year. Unfortunately, the proposed Order had not caught up to that, so there was a change to the funding there, that it will go on for nine years -- or ten years, actually, Your Honor, rather than just the eight years that were previously noted.

With respect to paragraph 35, Your Honor, that is just something referring to the disbursing agent, and based upon conversations that the Oversight Board and AAFAF have been having, as required pursuant to the Plan, the parties have agreed that the disbursing agent, if, in fact, the terms of the retention agreement can be ironed out, will be Prime Clerk. They will be primarily responsible for the distributions to be made to the creditors pursuant to the Plan.

We've included or will include in the proposed Order to be filed, Your Honor, that upon that designation being completed, we'll file an informative motion with the Court, so the Court is aware that it will be Prime Clerk serving as disbursing agent.

With respect to paragraph 36 of the proposed order, Your Honor, we have been including there language with respect to U.S. Bank. And there is a reference, Your Honor, to a settlement agreement that was entered into on a postpetition basis between AAFAF and U.S. Bank regarding the payment of certain postpetition fees by U.S. Bank in connection with PBA and PRIFA. We just have ironed out some additional language as to the timing for U.S. Bank to return excess funds to either PBA or PRIFA, as the case may be.

Your Honor, 56(g) of the Confirmation Order is the Plan provisions or the Confirmation Order provisions that had been requested by Quest Diagnostic. And as I reported to the Court, Your Honor, on Monday, we hadn't worked out the language for Quest. They had actually subsequently asked to delete one clause that we had initially included. We will make that deletion. And therefore, Your Honor, Quest is firmly in support of the Plan at this time.

Lastly, Your Honor, there was -- excuse me. Two more. One was by the DRA parties. There was a stray reference in paragraph 61(g) of the Plan, which is the

exculpation language for the DRA parties. The reference followed the reference -- the statement in the Order to (g), and it sets up (g) of this plan, it was meant to be just in that (g). They've asked us to delete those of this plan, and make that statement on the record, so I'm doing that now, Your Honor.

Lastly, Your Honor, with AAFAF, we have been working on some concerns associated with the PBA leases, and we are working out specific language with respect to the rights of those PBA leases to continue for a period of time as PBA and the Commonwealth continue to work out either the assumption or the rejection of those leases, or whether or not there will be a mass release entered into between the parties on a going-forward basis.

What we have done, Your Honor, is we've worked out a mechanism, so that the leases will continue, and we will provide notice to the Court as to the treatment of those prior to the effective date. But in any event, they will all be worked out by no later than June 30th of 2022.

The one other change to the Confirmation Order relates to Exhibit C, which actually relates back to your comment to me, or to us, just prior to the break, Your Honor. Exhibit K is the list of statutes that the Oversight Board has been reviewing as -- for purposes of preemption. And, first, I would like to note, Your Honor, that we had included, or we

intended to include three additional statutes, which were Acts 80, 81, and 82, which were approved and enacted by the Governor on August 3 of 2020.

And we had also wanted to include something that had been requested by certain parties with respect to Article VI of the Puerto Rico Constitution. And, specifically, the language in that regard, Your Honor, will be, whether the rights provided by Article VI, Sections 6 and 8 of the Puerto Rico Constitution, the General Obligation Bonds, and Commonwealth guaranteed bonds or indebtedness, restructured pursuant to the Plan are preempted by PROMESA is settled by the treatment of such bonds and indebtedness pursuant to the provisions of the Plan. Nothing in the Plan affects or determines whether Article VI, Section 6 and 8 of the Puerto Rico Constitution, is preempted for any future purpose.

Going back to the sentence that you expressed and noted, however, Your Honor -- again, it's on page six of the proposed Confirmation Order, paragraph 3(B). Your Honor, the inclusion of that sentence was because, while the Oversight Board continues to do its analysis of all of the statutes that may be out there, there are portions of statutes which provide for the payment or the creation of certain payment obligations, which may be inconsistent with PROMESA.

That's why of course, Your Honor, there is a reference to "or such portions thereof," because there are

certain acts, Your Honor, which are not inconsistent with PROMESA in any manner, and we are not looking to preempt those provisions.

Your Honor, as we continue this analysis, though, Your Honor, we wanted to be sure that we had the opportunity to alert the Court as to what statutes might be inconsistent with PROMESA, and if we determined any to be so, that we would certainly file an informative motion with the Court prior to the effective date, and allow parties to weigh in with respect to that if, in fact, they deem that preemption to be inappropriate, Your Honor.

So it's our effort to make sure that there is nothing inconsistent, and, at the same time, Your Honor, acknowledging that there might be something out there that we're unaware of, and that we're continuing the process to make sure that we capture all of those particular statutes.

THE COURT: Well, is the comprehensive process one that you envision culminating before the effective date with a definitive list that will be in Exhibit K, and so that the "include but without limitation" language in the following sentence can be eliminated?

Will this ever be a definitive universe of existing statutes?

MR. ROSEN: Your Honor, I know Mr. Bienenstock wants to speak on this issue.

MR. BIENENSTOCK: Would that be okay, Your Honor, just briefly?

THE COURT: Yes. Of course. Good morning.

MR. BIENENSTOCK: Good morning again. So this was our thinking and intent and request. To the extent that Exhibit K, as it is amended, lists statutes, where -- specifying those that we're asking the Court to rule are preempted, there's no way to know if we're going to find every single one. And so the sentence Your Honor identified was intended to serve only one purpose, to signify that just because a statute is not listed in Exhibit K doesn't mean it's not preempted. But if someone, and it may be someone other than the Oversight Board, determines it is preempted, they'll be able to come to the Title III Court, or whatever court has subject matter jurisdiction at the time, to argue that, because the wording of section four in PROMESA is that inconsistent laws are preempted.

So even if we said nothing, they're still preempted, but we wanted to identify the ones that the Board contends are definitely preempted, and reserve for the Board, or for other interested parties, the right to argue that others are preempted when and if those situations arise.

THE COURT: Thank you. I understand --

MR. BIENENSTOCK: Thank you, Your Honor.

THE COURT: -- the rationale.

MR. ROSEN: Your Honor, unless the Court has any additional questions, I believe that is all I have to address the objections that were raised to the Confirmation Order.

THE COURT: Thank you, Mr. Rosen. I have no other questions at this time.

So I'll now turn to Mr. Hein.

MR. HEIN: Can you hear me, Your Honor?

THE COURT: Yes, I can. Good morning, Mr. Hein.

MR. HEIN: Good morning.

With Your Honor's permission, I, in my objection, in addition to making more global points, tried to zero in on specific paragraphs, and I'd like to address those. But I'd like to start with the specific paragraphs that Mr. Rosen made reference to, just while we have that in mind, concerning the releases, the bar orders, the injunctions, and exculpation.

Mr. Rosen is correct that we did discuss those issues. I, you know, welcome seeing it in writing, the specific language that Mr. Rosen is suggesting, but I think from what I heard, as to the general release, the bar order, and the injunction provisions, I think that language is certainly going to help address, if not totally address, the issue. The language, you know, as I heard it, and just to kind of sum up my understanding, is basically, just to be explicit in words of one syllable, that nothing here is a nonconsensual, third-party release of nondebtors.

You know, whether you call it a release, or a bar order, or an injunction it's not going to affect rights as against nondebtors. The principle, though, I think while conceded, also has to be applied to the exculpation provisions in -- it's 92.7 of the Plan, and there are exculpation references. I think it's paragraph 58 of the Order, which is a more general reference, and, more specifically, in paragraph 61 of the Order. And these exculpation provisions expressly state that the third parties shall not have or incur any liability to any entity.

So to say someone has no liability to others is just a release in different words. And I realize the scope as to which there is no liability is narrower than the broader scope of the releases in 92.2(a), but the principle is the same. The exculpation provisions relieved parties of liability.

And specifically here we have a situation where, among the parties being relieved of liability, even though they are not debtors or reorganized debtors, are the very parties who participated in what, from my point of view, is the unequal treatment under the Plan of some bondholders who are not among the people that negotiated the deal.

And I would submit that it's completely unreasonable to say that particular parties are entitled to, in effect, impose unequal treatment on me and other individual bondholders, to say we don't get the same pro rata 1.5

percent, or, for that matter, that individuals need to go through hoops for many to navigate to get the 1.321 percent. And just as an aside, that's -- I'm mindful and Mr. Rosen is mindful of Your Honor's request that we submit a joint statement on that point. And we've discussed that, and I hope we can get to the point to have a joint statement.

But it's not reasonable to say that parties can impose this unequal treatment, and then, in addition, after saying that we get less pro rata than they do, that they should be exculpated with a provision saying that they will not have liability. And that, too, gets imposed on nonconsenting bondholders. It's just they can't have it both ways, and insist on unequal treatment, and then demand a nonconsensual release for that action.

The issue I'm raising could and, frankly, should be pretty simply resolved by simply according equal treatment to all, that every bondholder gets the same 1.5 percent and 1.321 percent, whether or not they could navigate the ATOP delivery process here. By simply giving equal treatment to every bondholder, we resolve this issue. But we can't have unequal treatment, and then expect that there's going to be a nonconsensual release.

So that's my, you know, comment specifically responsive to what we dis -- what Mr. Rosen discussed, but I would like to, with Your Honor's permission, address several

other specific provisions. And starting with the preemption provision that Your Honor asked about, paragraph 3(B) on page six, and just, you know, first, hearing the comments that were made, and in particular the comments about the -- how the constitutional provision is going to be handled, I'm just -- you know, I'm not -- first, I don't know that -- how one can wait until after Your Honor rules and then have something done just before the effective date. I think clarity is required, but clarity is required before Your Honor rules.

Secondly, what I heard about the constitutional provision, it just struck me as almost bewildering that preemption of the Constitution is settled for the past, but nothing addresses preemption of the Constitution in the future. As someone who is supposed to get new bonds that rely upon the constitutional provision, and the Disclosure Statement said that they -- you know, that was the source of payment, the constitutional provision, and the implementing statutes, I'm not very happy with the notion that this is unsettled. I think this is the time to settle that, simply put.

And just to put a finer point on it, and this deals with and I think further illustrates the problem here, this deals with comments Mr. Bienenstock made in replying on Monday. And Your Honor may recall that I had made the point that the Disclosure Statement describes, as the first and

second sources of payment to the new bond statutes, as well as the Constitution and implementing statutes, yet as to certain of those statutes, it was proposed that they be preempted. And one of those statutes was Act 33 of 1942.

And the Oversight Board's response from Mr. Bienenstock was not, oh, well, you know, of course if that's going to be part of what provides the authorization for General Obligation Bonds going forward, you know, surely we're not going to be preempting that. That's what I would have expected him to have said. But instead he said, well, the legislature actually repealed Act 33 back in September. And to put it mildly, I was just shocked.

On November 3, Act 33 was listed on the exhibit, Exhibit C to the proposed Order and Judgment, the prior version. That's at docket 19061, page 94. And the statute is clear in its language, quote, the good faith of the Commonwealth of Puerto Rico is hereby irrevocably pledged for the payment of the GO Bond. Irrevocable means irrevocable. There was no Court authorization to repeal this statute.

And, you know, this statute was specifically discussed in the Disclosure Statement last summer, where the Disclosure Statement, that people relied upon when they voted, you know, spoke about the fact that GO Bonds are issued under specific authorizing legislation, or Act No. 33 of December 7, 1942. That obviously -- statement in the Disclosure Statement

is no longer operative.

The Disclosure Statement even represented that if the Puerto Rico Legislature did not authorize the issuance of new bonds and CVIs, they could be issued pursuant to Act 33, another representation that's no longer operative. And what replaces Act 33? Is it Act 53 of 2021, which Your Honor heard discussed this morning?

You know, and obviously there is clearly an issue as to the conditionality of that, so it just -- to me, it underscores that this is not something that we can just treat as, you know, kind of broad brush. This is something where one has to get into the nitty gritty details, statute by statute, section by section, and, you know, almost line by line to know what's in, what's out, what their position is.

Let me turn to a different specific, and that's in 3(O) on page ten of the proposed Order. Paragraph 3(O) asserts that, for purposes of PROMESA 209, the discharge of debt is necessary for the Oversight Board to certify that expenditures do not exceed revenues for the Commonwealth, as determined in accordance with modified accrual accounting standards.

Now, section -- or PROMESA, it would be the section of PROMESA that paragraph 3(O) refers to, this PROMESA 209, provides that the Oversight Board shall terminate, upon the certification by the Oversight Board, among other things, that

for at least four consecutive years expenditures did not exceed revenues, and here's the key language, as determined in accordance with modified accrual accounting standards. Modified accrual accounting standards, in terms, are defined in PROMESA section five, subdivision 16, as recognizing revenues as they become available and measurable, and recognizing expenditures when liabilities are incurred, in each case as defined by the Government Accounting Standard Board, in accordance with Generally Accepted Accounting Principles.

Now, paragraph 3(O) is not -- there's nothing in this proposed Order that references any specifics in the record to show this. Certainly not with respect to the GO and PB -- or PBA Bonds. And certainly there's nothing prepared in accordance with Generally Accepted Accounting Principles in the records that support this, because as Your Honor knows, the last certified financials are over -- you know, for a period over three years old. So the last certified financials refer to a period ending June 30, 2018, so there's just nothing in the record with respect to -- in accordance with GAAP.

Now, by contrast, I have submitted in my objection and in the evidence I have submitted here multiple references that would certainly contest and I would submit refute paragraph 3(O), as to which the Oversight Board has the burden

of proof. And just as one example, and I'm not going to belabor this, you know, the fact that Puerto Rico had a four billion dollar cash surplus in the last fiscal year, and that that is three times the current GO and PBA debt service, it's Exhibits 18759-2, 18759-4, and then that they have 25 billion in cash, 13 billion cash on hand available to pay GO and PBA debt, that's in Exhibit 18758-7, 19164-1, 18758-6, and my declaration summarizes it, 19047, page six of 27. So, you know, I provided evidence. I've seen nothing to support 3(O) in the record.

Then turning to paragraphs four and five in the proposed Order that deal with litigation resolution and plan settlements, you know, we've covered this in the arguments, where I made the point regarding 944(a), that I'm not bound by the settlements of others. They still have to prove the requirements for confirmation. But I just want to make one point here in specific response to including paragraphs four and five in the Order.

It's one thing to say that the Court is going to look at a settlement presented consensually by two or more parties where all have agreed and agree to the settlement, and say, you know, I, the Court looked at this and I think it's within this broad range of reasonableness; but that's not what's occurring here.

They are asking you to look at the settlement that is

not agreed by all parties, and that I think is a very, very different inquiry here, to assess the reasonableness of the settlement that is disputed and that is contested by parties who are not parties to it. And among other -- and it's no answer to say, oh, the bondholders voted for this. That gets into the question of what the bondholders were told when they voted.

And just as one example to start, they were most certainly not told, when they were asked to vote, and the Disclosure Statement does not tell them this, that Puerto Rico had a four billion dollar surplus in the past year, three times the amount required to pay GO and PBA debt service, nor were other specific imperative disclosures I had asked for made. But just think of it. If you're a bondholder, you get something in the mail that says they have three times the amount required to pay debt service in their, you know, revenues over expenses in the past year, now give up, you know, 42 percent of your consideration in your bonds. I think the vote might be a little bit different, and particularly if you weren't also tying the vote to the offer of cash for vote.

Then, let me turn to three provisions relating to the 1.321 percent and 1.5 percent. This is paragraphs 34(a), 46, and 48. You know, on the 1.321 percent, we have the issue that we discussed Monday that Mr. Rosen and I hopefully will include discussions on -- on the 1.5 percent, we have the

issue that, you know, has been discussed, I just alluded to, over whether pro rata consideration can be paid to some, but not others, notwithstanding, among other things, 1123(a)(4). So that's an issue on the merits I just wanted to flag, that I specifically contest those paragraphs.

Then I'd like to turn to paragraph 69, which deals with tax requirements, and paragraph 69 provides that payments or redemptions with respect to the CVIs should not be subject to Commonwealth tax withholding. It would seem to me the same principles should apply to no tax withholding under the new GO Bonds, and I think that ought to be modified.

Then let me turn to paragraph 81, and this deals with section 92.2 of the Plan that Mr. Rosen referred to, and that I have had discussions with him about. I will look at his language, but my thought was, just being clear, and words of one syllable, tracking the language of 3020(e), the Order confirming the Plan is stayed until the expiration of 14 days after the entry of the Order, unless the Court orders otherwise. And this is key, the Plan shall not become effective until after the 14-day period expires, subject to any further relief the Court may grant.

And the reason we need to say that the Plan will not become effective until the 14-day period expires is otherwise we could have an argument that the releases and cancellation and extinguishment of existing bonds took place immediately,

and, gee, that can't be reversed or modified now that the Plan is effective. That's my concern.

On paragraph 85, this deals with modifications, and I want to highlight in particular my objection to the first sentence in paragraph 85. What this deals with, it states that the eliminating, the reduction in pensions, and the providing of significant cash bonuses to public employees and the like that have been done to modify the Plan, it states that does not adversely impair the interests of other creditors, such as GO holders.

And I submit that the changes between the Seventh Amended Plan --

(Sound played.)

MR. HEIN: -- from last summer, and the fiscal plan from April of 2021 that remains in effect, the changes in this Modified Eighth Plan that basically eliminates any reduction in monthly pension benefits, provides significant cash bonuses, like 11,000 apiece to members of one particular union, even though they're not owed any money, that absolutely adversely affects the interests of me and other GO holders who, you know, risk not getting paid if the money goes out the door first.

Final point deals with my request to stay consummation until there's a determination by the IRS as to tax exempt status. Your Honor, I've detailed, and two years

ago detailed, just the utter chaos that occurred in the COFINA situation, where taxable securities were issued even to investors in the 50 states. Shortly thereafter, it turned out the bonds could be tax exempt after all, but then Puerto Rico took advantage of the situation, because the status had not been determined before the effectiveness of the Plan. And they basically took the position, well, if you want tax exempt bonds, you have to give up 25 basis points of the interest rate that you were promised under the Plan.

So we had to accept a lower rate of interest than provided for in the Plan. And many individuals, also individual retail investors, had to pay these 30 dollar fees to their brokers just to get the tax exempt bonds they were entitled to all along.

And then the paperwork was just extraordinary with all of this back and forth. I had one COFINA bond at one of my brokers, and I counted over a hundred transactions within a two-month period relating to that one bond. I start with one bond, somehow end up with over a hundred transactions.

No one has provided any --

(Sound played.)

MR. HEIN: May I finish the thought, Your Honor?

THE COURT: Yes, you may.

MR. HEIN: No one has identified any good reason we need to put me and other retail investors through this again.

We can avoid the problem by simply getting the tax exempt status resolved before, not after this becomes effective and bonds are distributed.

Thank you, Your Honor.

THE COURT: Thank you, Mr. Hein.

The next speaker is Mr. DeChiara.

MR. DECHIARA: Thank you, Your Honor. Peter DeChiara, from the law firm of Cohen, Weiss & Simon, LLP, for the United Auto Workers International Union and Service Employees International Union.

I've already addressed UAW and SEIU's objection to paragraph 62 of the proposed Confirmation Order. I'll now address other objections that UAW and SEIU have to the proposed Confirmation Order.

First let me say we appreciate Mr. Rosen's comments concerning amendments to the Order that were made in response to certain of our objections, but, unfortunately, we only learned of those amendments minutes ago, while Mr. Rosen was speaking. So obviously we need to review them, and we reserve all rights concerning those amendments.

And, moreover, even though a couple of our objections may have been resolved, I'd like to briefly note our position on them on the record. Our first objection concerns union grievance claims, which are claims that the Commonwealth, in its role as employer, violated either a collective bargaining

agreement or a Puerto Rico unemployment law statute. We seek that the proposed Order be amended to make clear that the Plan does not discharge such claims.

The Court's March 12th, 2020, ACR Order, docket entry 12274, at paragraph six, specifically names UAW and SEIU, along with two other unions, and expressly provides that the grievance claims of those named unions would be processed and paid "in the ordinary course."

We seek clarification that if the Confirmation Order does not change, the treatment of UAW and SEIU grievance claims set out under the ACR Order -- it appears, based on Mr. Rosen's representations this morning, that this issue has been resolved, so I won't say anything more on that subject now.

Next we request clarification that the administrative claims bar date in paragraph 44 of the proposed Order, which sets a bar date of 90 days after the Plan's effective date, does not apply to union grievance claims. The Oversight Board takes the position in its Omnibus Reply to the plan objections that union grievance claims are not administrative claims. So we assume that the Board would agree that the administrative claims bar date does not apply to union grievance claims. So this should not be a matter of dispute, but Mr. Rosen did not mention any clarification to the Order on this point.

Because the ACR Order provides that UAW and SEIU

grievance claims are to be paid in the ordinary course, they should not be subject to any bar date, administrative or otherwise. Moreover, just as a practical matter, given the extremely slow pace at which Commonwealth agencies resolve union grievance claims, it would be impossible for the UAW and SEIU to comply with administrative bar date.

It typically takes years after a union files a grievance to get a resolution. There is no way the UAW and SEIU could file an administrative expense claim for all of our grievances by 90 days of the Plan's effective date.

So for those reasons, we request that the Court clarify that the Confirmation Order -- or clarify the Confirmation Order to provide that the administrative claims bar date in paragraph 44 does not apply to union grievance claims.

Our next objection concerns paragraph 29 of the proposed Confirmation Order. That paragraph provides that executory contracts are deemed rejected. It lists certain exceptions, but the list of exceptions does not include collective bargaining agreements.

The Plan, at section 76.10, expressly provides that the Commonwealth's collective bargaining agreements will remain in effect and not be rejected. To avoid any doubt, and because of the obvious importance of this issue, we seek an amendment to paragraph 29 that adds collective bargaining

agreements to the list of contracts that will remain in effect and not be rejected. Mr. Rosen's remarks suggest that this issue has now been resolved, so I won't say anything more on that issue at this point.

And then, finally, we object to paragraph 26 of the proposed Confirmation Order, to the extent that it directs the Governor and legislature to enact enabling legislation required by the Plan. Such indirection is neither necessary nor authorized. If, as the Oversight Board contends, Act 53 constitutes the enabling legislation required by the Plan, then the enabling legislation already exists. The Confirmation Order does not need language mandating legislation that already exists.

In any event, the language requiring the Commonwealth to enact enabling legislation is also unauthorized. Certainly the Oversight Board does not have authority to mandate Commonwealth legislation. The Board is not a control board. PROMESA created a power sharing arrangement between the Oversight Board and the Commonwealth.

PROMESA section 314(b)(5) makes clear that enabling legislation is something that the Board would have to obtain from the Commonwealth, and as the Court has explained, if the Oversight Board wants something, or wants to obtain something from the Commonwealth, it has to get the Commonwealth's buy-in. That language occurs at 330 F. Supp. 3d, at 701.

Nor does the Court have authority to order the Commonwealth to enact legislation. A Court may strike down existing legislation. A Court may order a government agency to comply with existing legislation. But a Court has no power to order a government to create new legislation. Legislation by judicial edict simply does not exist in this country.

In our democratic system of government, legislators are free to vote or not vote for whatever legislation they choose. A Court may not order a legislator to vote for a bill. Similarly, the executive is free to sign or veto proposed legislation based on what he or she thinks best. Because it is both unnecessary and unauthorized, the Court should strike the language in paragraph 26 requiring the Commonwealth to enact enabling legislation.

And I would note that this is not a moot issue. It is a live controversy, so long as the language remains in the proposed order, and so long as --

(Whereupon the videoconference connection froze.)

THE COURT: Thank you all for your arguments this morning, and I will look forward to seeing you at 2:10 or 3:10 --

COURT REPORTER: Your Honor.

THE COURT: -- depending where you are.

COURT REPORTER: Your Honor, can you hear me?

THE COURT: Yes.

COURT REPORTER: I'm so sorry. We froze again, in Puerto Rico. It was just for a couple seconds, but it was -- the last I heard was counsel saying, "I would note that this is not a moot issue. It is a live controversy, so long as the language remains in the proposed Order, and so long as --" and then we froze.

THE COURT: All right. Mr. DeChiara, would you come back and repeat your concluding sentence or sentences?

MR. DECHIARA: Yes. I said, "and so long as UAW and SEIU object to it, which we do."

THE COURT: Thank you.

Mr. Gordon has his hand up.

MR. GORDON: Yes. Thank you, Your Honor. May I speak?

THE COURT: Yes.

MR. GORDON: Thank you. I just wanted to clarify, the remaining objecting parties, as listed as such in the Agenda, will we be then heard when we resume this afternoon? Is that the idea?

THE COURT: Yes. So I have listed as further objecting speakers the Credit Unions, the Retiree Committee, the UCC, Assured, PFZ, and Finca Matilde, and then we'll have the reply remarks by the Oversight Board.

MR. GORDON: Thank you, Your Honor.

THE COURT: Thank you. We are now adjourned.

(At 12:45 PM, recess taken.)

(At 3:09 PM, proceedings reconvened.)

THE COURT: Good afternoon, everyone. We are back to resume the oral argument regarding objections to the third revised proposed Order confirming the Plan, and I remind all of our Zoom participants and telephone listeners that there's to be no recording or retransmission of any part of the proceedings.

I now call on counsel for the Credit Unions, Mr. Almeida, who is allotted four minutes.

MR. ALMEIDA: Yes. Good afternoon, Your Honor, court staff, and people present in this videoconference. This is Attorney Enrique Almeida, on behalf of the Credit Unions.

On November 15, 2021, at docket 19221, the Credit Unions filed a joint objection to the modified proposed Order and Judgment Confirming the Plan. In essence, the Credit Unions objected to the proposed Order and Judgment Confirming the Plan in as much as it is not in alignment with the requests made in their objections to the Plan of Adjustment as amended or modified. Thus, the Credit Unions restated their arguments in objection to the Plan of Adjustment at docket 18594.

The findings and conclusions in the proposed Order and Judgment Confirming the Plan of Adjustment deny all objections to the Plan and discards an Order of Confirmation

wherein this Honorable Court would, under section 944(c)(1), except from discharge the constitutional takings of the Credit Unions as expounded in their objection and claim in the Adversary Proceeding 18-28.

In particular, the proposed finding concerning discharge and releases of claims and causes of actions at paragraph 56 discharges all of the Credit Unions claims, even though this Honorable Court has not determined the dischargeabilty or nondischargeability of their claims as requested in Adversary Proceeding 18-28, and as requested in their objection to the Plan.

Therefore, the Credit Unions object to the proposed finding in paragraph 56 of the proposed Order, and request that it be amended to provide for the exception of discharge of the Credit Unions' claims. We just wanted the record to be clear on this objection, as to the fact that the Credit Unions do not accept the language proposed by the Oversight Board in such paragraphs.

Now, as to the proposed finding regarding preemption that was addressed in our objection at page 12 of docket 19221, we respectfully submitted that the proposed Order and Judgment seeks to broadly eliminate and swipe away Commonwealth laws through an excessively broad and premature finding of preemption at paragraph 3(B).

The preemption finding is improper and inconsistent

with legal doctrine that balances federal mandates with due respect to state law. The preemption finding is contrary to PROMESA --

(Sound played.)

MR. ALMEIDA: -- section 303 as to the Commonwealth power to control, by legislation or otherwise, the territory or any territorial instrumentality in exercise of the political governmental powers, including expenditures for such exercise.

We respectfully submit that the proposed finding at paragraph 3(B) is improper and excessive, as it would serve as a blanket power to the Oversight Board to repeal valid loss, which is a legislative power which it does not have under PROMESA. Therefore, we submit that it should be modified or stricken as it is currently drafted.

In order to be brief, with regards to the rest of our position as to the proposed findings of fact and conclusions in the proposed Order, we will rely and restate the Credit Unions' arguments as stated in the objections filed at docket 19221 and 18594. Thank you.

THE COURT: Thank you, Mr. Almeida.

Next we have Mr. Gordon for the Retiree Committee for five minutes.

MR. GORDON: Thank you, Your Honor. Can you hear me?

THE COURT: Yes, I can. Good afternoon.

MR. GORDON: Thank you so much. Again, for the record, Robert Gordon of Jenner & Block on behalf of the Retiree Committee.

Your Honor, the Retiree Committee filed a reservation of rights at docket number 19248. And Mr. Rosen is correct that the Oversight Board, the Retiree Committee, and other parties are now in the process of discussing and hopefully progressing these matters in the near term.

However, I believe it is important to make a brief record here of the concern, and our reservation of rights. And I will indeed be brief in this regard. As described in our reservation of rights, the Plan Support Agreement dated June 7, 2019, by and between the Oversight Board and the Retiree Committee, contemplated, among other things, the creation of a pension reserve trust for the benefit of retirees, an entity to provide professional management of the funds to be held by the pension reserve trust, and an independent entity to monitor the funding of the pension reserve, and the withdrawal of funds from the reserve by the Commonwealth.

The Plan Support Agreement envisioned the creation of a guidelines document to provide these things, and that the guidelines document would be a definitive document. That's a defined term in the Plan Support of Agreement. A definitive document incorporated in the Plan of Adjustment. To that end,

the Retiree Committee negotiated extensively with the Oversight Board professionals over the span of the last two and a half years, interrupted at various points by earthquakes, pandemic, and other events to be sure, to develop those guidelines.

While certain details of the guidelines are still being negotiated, Your Honor, the guidelines document is a robust document that provides a detailed structure for, among other things, the creation and governance of the trust, a pension reserve board to professionally manage the assets and invest the funds held in the trust, and a pension benefits counsel comprising retirees and active employees as a majority of the counsel members, as well as designees from the Oversight Board and the Commonwealth to oversee the funding of and withdrawals from the trust by the Commonwealth for the benefit of retirees.

The draft guidelines clearly articulate and circumscribe the responsibilities of the pension reserve board and the pension benefits counsel; the composition of those entities; the professional qualifications of the Pension Reserve Board members; the method of appointing members to the Board, and counsel, as of the effective date of the Plan; and the process of conducting elections of retiring members to the Pension Benefits Counsel during a transition period after the effective date, and thereafter; the general contents of each

entity's bylaws, and of the deed of public trust that will establish the pension trust, which bylaws and deed of trust will include, among other things, ethics policies. The guidelines also provide for investment policies and procedures that are appropriate for the pension trust, and a highly detailed formula for withdrawals from the trust that ensure that the Commonwealth doesn't try to use the trust as a piggy bank of first resort, but rather as the rainy day fund for the support of pensioners that is intended to be.

(Sound played.)

MR. GORDON: All of this, and much, much more is provided in the guidelines document, and none of it is provided for in the Plan or the Confirmation Order. The guidelines document is a relatively mature document in the final stages of negotiation, but, to date, not even a draft of it has been filed with the Court as a place holder, Plan support, Plan supplement document. And to be clear, I'm not -- I'm stating that merely factually, not as a matter of criticism. But as such, the guidelines have not been put before the Court and are not encompassed by the proposed Confirmation Order at this time.

As we've indicated in our reservation of rights, we certainly understand that the Oversight Board has been juggling numerous matters as it prepared for and has been conducting these confirmation hearings, and we are hopeful

that we will complete the negotiation of the guidelines shortly. Indeed, substantive discussions are resuming in the near term.

However, in light of the posture of the case and the deadline for objecting to the current proposed Confirmation Order, we felt compelled to file a reservation of rights and create a place holder to address these issues, if necessary, before completion of these hearings in order to preserve the benefits of the Retiree Committee's Plan Support Agreement and our retiree constituents.

Your Honor, one other housekeeping matter. I noticed last night, and I have communicated with counsel for the Oversight Board, I noticed that in section 83.2 of the Modified Eighth Amended Plan, the provision is there for a ten-year funding period for the pension reserve trust. However, paragraph 23 of the current form of the Confirmation Order still reflects an eight-year funding period. I have been told that that is being fixed. I just wanted to make that a part of the record as well.

With that, Your Honor, thank you so much.

THE COURT: Just for clarity, I think Mr. Rosen referred to nine years, rather than eight years, and you're saying ten. Is there --

MR. GORDON: Yes. No. I'm sorry, Your Honor. It is the current year, from the effective date, plus nine fiscal

years thereafter, so it ends up being ten years.

(Sound played.)

THE COURT: Thank you for clarifying that. I interrupted you in your final statement, so did you have anything further?

MR. GORDON: No, Your Honor. I was just thanking you and indicating that, unless the Court has any questions for me, that concludes my remarks for today.

THE COURT: Thank you, Mr. Gordon.

MR. GORDON: Thank you.

THE COURT: Next we have Mr. Despins, for the Unsecured Creditors Committee, for three minutes.

MR. DESPINS: Good afternoon, Your Honor. And, actually, I will not need to use that time, because Mr. Rosen accurately described where we are, which is that the last issue was resolved yesterday evening, so there's no need to raise any issues with the Court at this time.

Thank you, Your Honor.

THE COURT: Thank you, Mr. Despins.

Next is Mr. Natbony for Assured for five minutes.

MR. NATBONY: Thank you, Your Honor. William Natbony of Cadwalader, Wickersham & Taft on behalf of Assured.

Your Honor, Assured is not an objector to the proposed Order and Judgment, but merely served a reservation of rights in case language changes were made since the last

draft that Assured needed to address. So Assured has no issues with the Order and Judgment as currently drafted.

However, I do need to briefly address a comment made earlier this morning by Mr. Hein. Mr. Hein in his comments today suggested changes to various exculpation provisions. I did not hear Mr. Rosen to suggest earlier that there would be changes to the exculpation provisions as related to the Monolines, for instance, in paragraph 61(f) of the proposed Order, and our expectation is that there will be no such changes.

In any event, Mr. Hein's comments from this morning do not, in our view, support any changes to the Monolines' exculpation provisions. First, Your Honor, Mr. Hein's objection to the proposed Order and Judgment that was filed, that's ECF 19218, merely refers to the objections that Mr. Hein raised in the Plan of Confirmation, which were filed at ECF 18575.

And that filing does not challenge and makes no objections to the exculpation provisions. It just deals with the release provisions. So it is our view that there is no objection to the exculpation provision from Mr. Hein relating to the Monolines before the Court.

I would also note that this past Monday, during the arguments, during Mr. Hein's argument in particular, he did talk about exculpation, and this is at pages 135 and 136 of

the transcript. He made the specific point that his comments were, quote, not in any way directed to the Monolines. And again, that's at pages 135 and 36.

In addition, Your Honor, I would just note that, as I said on Monday, the exculpation provisions are appropriate as to the Monolines as originally drafted. They were part of this consideration. Indeed, the integral consideration that was appropriate in view of the Monolines' substantial contribution to the restructuring of the Commonwealth, as well as the other Monolines, and was consistent with the exculpation language that was approved in *COFINA*.

That's all I have to say, Your Honor.

THE COURT: Thank you, Mr. Natbony.

MR. NATBONY: Thank you, Your Honor.

THE COURT: Next we have Mr. Carrion-Baralt for PFZ for three minutes.

MR. CARRION-BARALT: Good afternoon, Your Honor. David Carrion-Baralt on behalf of PFZ Properties. May I proceed?

THE COURT: Yes, you may.

MR. CARRION-BARALT: As our position has been briefed in writing, we will only state that unless the Plan and the proposed Order are amended to address the issues presented by PFZ, or PFZ's eminent domain claim is excluded from the Plan under 11 U.S. Code 944, we believe both the Plan and the

proposed Order are unconstitutional.

We have filed notice of a constitutional challenge to a statute. Your Honor certified the issue to the Attorney General. The Attorney General just filed an appearance, and requested an extension of time. And our request to the Court now would be to allow us a reasonable time to react to the AG's brief if the United States decides to do so. We also reserve the right to supplement the objection if the proposed Order is modified.

Subject to your questions, that would be our remarks.

THE COURT: Thank you, Mr. Carrion-Baralt.

MR. CARRION-BARALT: Whatever time is left, I yield to Mr. Capdevila, who comes after me.

THE COURT: Thank you. Next is Mr. Capdevila, for Finca Matilde.

MR. CARRION-BARALT: Thank you, Your Honor.

MR. CAPDEVILA-DIAZ: Good morning, Your Honor.

THE COURT: Good afternoon.

MR. CAPDEVILA-DIAZ: Good afternoon. Sorry.

THE COURT: Or good day. How's that?

MR. CAPDEVILA-DIAZ: I'll be brief. I originally requested ten minutes, but I had yielded six minutes to Mr. Hein, which were not reflected in the Agenda, so just to say that I'll be brief.

THE COURT: Thank you.

MR. CAPDEVILA-DIAZ: Okay. Well, Your Honor, the proposed Order before the Court is just that, a proposed order. It is the Board's idea of what the Confirmation Order should be. And to that extent, that is their position, but that does not mean that it is correct.

Our objection, and minding the Court's comments before the recess this morning, it's not just a reservation of rights, that -- because we already objected to the dischargeability of the debt, of our client's debt for eminent domain, but also because the proposed Order does not take into account the Court's discretion pursuant to section 944(c)(1) of the Bankruptcy Code as applicable to PROMESA.

In fact, Monday morning the Board argued that it does not apply, and, well, Your Honor, the rules of statutory construction direct the Court to presume that Congress knows how -- does not act in futility. Congress knows how to legislate, thus, the statute says what it states and means what it says.

Section 941(c)(1) (sic) grants the Court the power to exempt debts from discharge, to argue that the Court lacks authority to determine that eminent domain claimants, whether direct, or regulatory, or indirect takings are nondischargeable, would render section 944(c)(1) purposeless. And that is why, Your Honor, we request that on the proposed Order, paragraphs 56 and 65, that reflect -- or of course in

the scenario where the Court grants our objection, that those paragraphs, both paragraphs need to be modified.

And I would like to clarify for the record, Your Honor, our objection to the proposed Order is at docket 19214, and by mistake we stated that the paragraph that needs modification is 49, but that was a typo, and I'm sorry.

THE COURT: Understood.

MR. CAPDEVILA-DIAZ: Thank you very much, Your Honor, for the time.

THE COURT: Thank you very much, Mr. Capdevilla.

So now we will return to Mr. Rosen for reply remarks.

MR. ROSEN: Thank you very much, Your Honor. Brian Rosen, Proskauer Rose, on behalf of the Oversight Board.

Your Honor, notwithstanding your comments earlier, a lot of the folks still decided to revisit some of their objections. Most notably Mr. Hein, who, despite saying he wasn't going to be doing that, he launched a collateral attack on the very process, not only the Plan, but the mediation process as well. And he did that in the context of his argument that there shouldn't be any exculpation provided for the people who were involved in the Plan negotiation process that the Court put in place and that was lead by Judge Houser.

Your Honor, the negotiations that took place as part of the mediation, that fostered the ultimate resolution of

these Title III cases. It developed a process, it developed a mechanism, and as I said before, it built the building upon which this Plan of Adjustment rests.

Your Honor, no party -- if they did not -- if they were not granted the rights of exculpation that is customary, no party would ever engage in a negotiation. It just wouldn't happen. And the efforts that this Court undertook to have the negotiation take place just would not have occurred. No one would have come. No one would have spoken honestly. Nobody would have reached a resolution.

Your Honor, Mr. Hein somehow believes that unless he agrees to everything, this Court shouldn't do anything, and that's just not the way a collective action process like a Title III Plan, like a Chapter 11 Plan works. This Court engaged all the parties to negotiate in good faith. As the mediator stated, everybody did do just that. There were good faith negotiations. It result in a resolution, and it resulted in a Plan of Adjustment that has been overwhelmingly endorsed, including by the classes in which Mr. Hein claims to be a party. So, Your Honor, there is no doubt that the exculpation provisions of the Plan, of the Confirmation Order, need to remain.

As Mr. Natbony said, you know, Mr. Hein is taking shots at people for engaging, but those shots, Your Honor, should miss the mark completely. And this Court should grant

the exculpation that is included in the Plan and in the proposed Confirmation Order.

Mr. Hein also brought up the 1.321 fee, Your Honor, and we went back and we reviewed the situation again subsequent to our Monday hearings, and the Oversight Board would like to propose something that would benefit all of the people that Mr. Hein purports to represent, the retail classes. There are many people who did not vote in favor, Your Honor, and there are many people who may have misunderstood, which we don't know why, but they may have. So, Your Honor, we would like to try one more time to provide all of those folks the opportunity to get the benefit of that 1.321 pro rata share. And the way to do that, Your Honor, is for these people to certify that they are indeed retail investors. In the absence of that, we don't know who they might be.

So, Your Honor, what we would like to do, in the event that this Court confirms the Plan of Adjustment, is to engage DTC, or through Prime Clerk and DTC, to go out one more time, to all of these people, to certify that they do hold less than one -- one million dollars or less of retail -- of bonds, therefore, making them a retail investor. And if they so certify, Your Honor, they will get the 1.321 fee that Mr. Hein is so concerned that they may have missed out on.

So that is something that we would like to do in the

event that this Court confirms the Plan of Adjustment, Your Honor.

THE COURT: So are you saying that that is a provision that you would add to the Plan and Order before I make my confirmation determination, or that that is a step that you would introduce formally, and document, and seek to pursue if and only if I confirm the Plan?

MR. ROSEN: Your Honor, my suggestion would be that we include it into the Confirmation Order itself, and it would be self executing in the event that the Court enters that Confirmation Order.

THE COURT: At this point, without that, and notwithstanding the broad discussion we had of who gets the fee and who doesn't get the fee on Monday, if someone didn't respond at all, didn't vote at all in a way that would indicate they were a retail investor, as things stand now, they would not get the fee?

MR. ROSEN: It would be impossible for us to know if, in fact, they were a retail investor if they failed to certify it, Your Honor, because, as we said in the declarations, we cannot look through DTC, so, therefore, we need them to be responsive, complete the certification, so that we know who they are, and then they will get the fee, Your Honor.

THE COURT: Thank you for making that clear.

MR. ROSEN: Yes, Your Honor.

Your Honor, Mr. DeChiara, and I apologize if I mispronounce that, Your Honor, he did raise four points: Two of which he was in agreement to what I said earlier, and two additional points. One was the administrative bar date, and, Your Honor, we have no problem making clear that the grievance claims would roll through like he is suggesting, because that was the game plan all along, Your Honor. They would be in the ordinary course. Therefore, they would not need to be filed as administrative bar date claims.

The other comment he had was, at paragraph 26, he was specifically upset about the -- including about limitation enacting any enabling legislation required by, and solely to the extent set forth in the Plan -- Your Honor, we'll delete that language. That is fine with us as well.

With respect to Mr. Gordon, Your Honor, the Plan Supplement is what it is, and as soon as he finishes his work, we will file that document. The Confirmation Order provides that all plan supplement documents are to be approved, just like the Court did in the context of the COFINA Plan of Adjustment, so we will do the same thing. As they are done, and there are versions going back and forth, not only of that document, but the new GO bond indenture and the CVI indenture, they will be refiled with the Court, Your Honor. And that will be part of the formal record, just like you did in the context of *COFINA*.

Your Honor, I believe the remaining comments were with respect to the eminent domain and nondischargeablility, so there would be nothing further for me to add there. Excuse me one second, Your Honor.

Your Honor, if I might, Mr. Bienenstock has asked to just address one point with the time I have left.

THE COURT: I actually have a couple of questions for you, and we'll continue to run the time.

MR. ROSEN: Okay.

THE COURT: Meaning I'll allow time for Mr. Bienenstock to speak.

So in paragraph four, there is language that says that the compromises and settlements shall be binding upon the debtors, all creditors of the debtors, and all other entities. Is that simply saying that creditors can't challenge the deals between the Commonwealth and the PSA creditors, or is it affirmatively seeking to bind nonaccepting creditors to the legal compromises in the PSAs?

MR. ROSEN: Your Honor, it would be the latter, as you just stated it. It would be that all creditors involved in the cases, whether or not they are a signatory to those, would be bound to the terms of all of those settlements.

THE COURT: Where specifically does the authority for that come from? It seems to me that 1129(b) provides that the accepting vote of the class forecloses, for instance, unfair

discrimination arguments, or that it is not fair and equitable with respect to an impaired class, but what other arguments are foreclosed and on what specific legal basis?

(Sound played.)

THE COURT: You can continue speaking.

MR. ROSEN: I apologize, Your Honor. I don't understand the question.

These are settlements that were -- and if I state it incorrectly, I would ask you to try again for me. Your Honor, these are the settlements that were reached. They are part and parcel or integral to the formation of the distributions that are set forth in the Plan, and they have been voted on by all of the creditors involved in this case to the extent that they submitted a vote. And they have -- as I indicated several times over, they have been approved or overwhelmingly accepted by those creditors.

I'm not sure I understood the question otherwise.

THE COURT: I'm trying to think of how to state it more clearly. The treatments in these accepting classes that we're talking about are reflective of settlement agreements that were negotiated by certain parties that set the terms of the treatment of the class, and as accepting classes, certain Bankruptcy Code arguments are foreclosed to dissenting members of that class. For instance, unfair discrimination.

Are you saying that, in effect, the acceptance by the

class makes the dissenters parties to the settlement agreement, so that they are foreclosed from attacking the -- from raising issues as to the terms of the class treatment by the acceptance of the class? I'm not sure that was any clearer, but I tried.

MR. ROSEN: I got it that time, and the answer is absolutely, yes, Your Honor. That's the argument that we've been making as -- when Mr. Hein raises some of these points, what we've tried to focus on -- the fact is that his classes have in fact supported the Plan, endorsed the Plan, accepted the Plan, and, therefore, the arguments that he chooses to make are not available to him.

THE COURT: That is because of 1129(b)?

MR. ROSEN: Yes.

THE COURT: Thank you.

MR. ROSEN: I apologize for making you go through that.

THE COURT: I just wanted to have the record as clear as possible. I have no further questions for you at this time.

MR. ROSEN: Thank you very much, Your Honor.

THE COURT: So Mr. Bienenstock can come up.

MR. ROSEN: Thank you.

THE COURT: Thank you.

MR. BIENENSTOCK: Thank you, Your Honor. Martin

Bienenstock of Proskauer Rose, LLP, for the Oversight Board, as Title III representative.

On this very last point, this might be stating the obvious, but we are not saying that Mr. Hein cannot try to show that the settlement should not be approved, but what we are saying is he can't attack it, because he doesn't like it, unless -- if the Court approves the settlement, he's bound by its terms.

The point I rose to -- I just wanted to provide some clarity, because I think the last objector before Mr. Rosen spoke took issue with what I said about 944(c)(1), and I just wanted to clarify what I did say and what I didn't say. The Bankruptcy Code provision that's incorporated into PROMESA provides the only claims nondischargeable are the claims that are in the Confirmation Order or Plan as not being discharged or are held by entities that lack knowledge and notice of the case, and the confirmation -- and the Plan.

And the point that I had made the other day was this: The fact that the Confirmation Order can contain claims that are not discharged does not mean the Court has a free wheeling equity power to go through every claim and say, well, this one I think I'll make nondischargeable, and this one I won't.

I don't mean to suggest that this Court or any Court would be arbitrary about it, but I just want to get across the point that the statute does not grant any power to do that.

And so what the Oversight Board is saying is if a claim is nondischargeable, the Court can put it in the Order as nondischargeable. If a claim is not nondischargeable, the Court cannot make it nondischargeable just by putting it there. That was the only point I was making.

THE COURT: Thank you.

MR. BIENENSTOCK: Thank you.

THE COURT: Mr. Rosen.

MR. ROSEN: Your Honor, I just wanted to come back and state one other item, and then we can get to housekeeping yet again. Your Honor, I had indicated previously that the Oversight Board had reached an understanding with U.S. Bank, not only as fiscal agent, but also representing a majority of the holders of PFC, with respect to a treatment not only pursuant to a plan, but an overall treatment with respect to PFC Bonds. I also indicated that the Oversight Board had authorized and approved that resolution.

I believe Ms. DiConza might be on the phone. We were awaiting, Your Honor, if you recall, approval by AAFAF and PFC with respect to that. And I believe she could at least update us with respect to that. And if so, Your Honor, we would be looking to move forward on that as soon as possible. Obviously not realtime, this week, next week, but we would be preparing a Title VI proceeding with respect to PFC.

With that, I would turn it over to Ms. DiConza, if

the Court will permit.

THE COURT: Thank you.

Ms. DiConza.

MS. DICONZA: Good afternoon, Your Honor. Maria DiConza, from O'Melveny, on behalf of AAFAF.

Yes, I can confirm what Mr. Rosen said, that there is an agreement in principle with the PFC Bond Trustee that now, as Mr. Rosen represented, the Oversight Board has approved. That transaction is subject to the approval of the AAFAF Board and the PFC Board, but AAFAF management does support the transaction, and will be submitting it to the AAFAF Board and the PFC Board for formal approval.

We did want to make it clear on the record that that process is in place, and we do expect it to move forward expeditiously.

THE COURT: Thank you. Then the PFC Board would have to approve as well, and then you contemplate it culminating and being accomplished through a Title VI?

MS. DICONZA: That's correct, Your Honor. So we would proceed with solicitation materials and the Title VI proceeding, as we have with the other Title VI cases.

THE COURT: Thank you.

So, Mr. Rosen.

MR. ROSEN: Yes, Your Honor.

THE COURT: I'm sorry. There is a hand raised.

Counsel for U.S. Bank, Mr. Silverman.

MR. SILVERMAN: Good afternoon, Your Honor. For the record, Ronald Silverman, counsel to U.S. Bank, as the PFC Trustee. Are you able to hear me well?

THE COURT: Yes, I can hear you. Thank you.

MR. SILVERMAN: Thank you.

I just wanted to reiterate and confirm the statements made by Mr. Rosen and Ms. DiConza, that there has been an agreement on a term sheet for the settlement and resolution of the PFC Trustee's objection to this Plan. And I'm pleased to hear them say that they have both approved that, again, for AAFAF, subject to their ultimate board approval, and to be implemented, just for a little clarity, pursuant to a Title VI for PFC. And the parties have agreed to move promptly to do that.

To the extent that we get to the closing arguments, I think it would be helpful if we could provide some of the high level details of the settlement as well. It does involve PFC Bonds, so it is intended to be resolved through a PFC Title VI and that mechanism. But I just wanted to thank Mr. Rosen, thank Ms. DiConza for those confirmations, so that we can move forward collectively and together.

Thank you, Your Honor.

THE COURT: Thank you, Mr. Silverman.

So now I'll return to Mr. Rosen.

MR. ROSEN: Thank you, Your Honor.

Your Honor, this -- I say it's housekeeping, but it's really in order to -- it's a comment to try and be helpful for the Court, as well as helpful for not only the Oversight Board's presentation, but the presentation of all of the people.

Your Honor, the sessions that we have held this week, both Monday and today, the presentation of the oral argument have been truly informative, not only for all of us, but I would hope for you as well. And the question that I have then, as a result of that is what do you think would be more helpful for your consideration as part of the closings that you are looking for on Monday? Because -- rather than restating many of the things that have been done Monday and today, what exactly you would be looking for, so we can make sure that we are instructive to you?

THE COURT: Well, these legal arguments have been very helpful to me, and so they certainly don't need all to be reiterated in the closings. Closings, in more typical, general, commercial, and criminal litigation marshal the factual record for the benefit of the Court in the context of the legal positions of the parties.

Right now I have admitted a few hundred exhibits, and so to the extent that there is material in the exhibits that the parties believe is material to a determination either for

or against confirmation, I would expect those to be identified in an efficient and accessible way for the Court, so that I don't have to go searching through the haystack to find corroborating material.

Having said that, I have set a deadline for revised proposed findings, and conclusions, and I believe objections thereto. So the granular detail I would expect to find in the proposed findings and conclusions, but an overall conceptual marshaling of the arguments and the record in the context of the closing arguments will be helpful to the Court.

MR. ROSEN: Thank you.

THE COURT: Does that make sense?

MR. ROSEN: It does, Your Honor. That's what we assumed that you would want. We just wanted to make sure, so that we didn't misstep, or we didn't leave something out that you were looking for.

THE COURT: Thank you. I'm glad we're on the same page about that.

So we set the time parameters, and the start time, that being 9:30 Monday morning Atlantic Standard, 8:30 Monday morning Eastern Standard, for the closing arguments. I will say that today we have received the Attorney General's statement and request concerning the certification of the constitutional challenges, and we are entering a very rapid scheduling order for any objections to the extension request.

That scheduling order says that I will take that matter under advisement. If I need argument on that, I will file another order in that regard, but I wanted to take this opportunity to let people know that that order is being filed, and it requires objections I think by 5:00 -- hold on. I'm just consulting with my colleague here.

Is that 5:00 today or tomorrow? That's what I thought. Okay. Fine.

Pardon me talking sort of off camera here, but the deadline for responses or objections is 5:00 Atlantic Standard tomorrow, Thursday, and the reply deadline is 5:00 Atlantic Standard, Friday.

I think that is all that I have by way of housekeeping from this end today. Do you have anything further, Mr. Rosen?

MR. ROSEN: No. Thank you, Your Honor. That is all.

THE COURT: Thank you.

I don't see any hands raised, so I again thank everyone for their focus, and attention, and their responsiveness to my request for oral argument here. These two days have been very helpful to me, and I wish you further progress in all that you have to do over the next few days, until we reconvene for oral argument. I'll look forward to the various submissions between now and then.

Keep safe, and stay well. I thank everyone on the

court end of things who have so gracefully and effectively administered these proceedings.

So we are adjourned. Take care, everyone.

(At 3:51 PM, proceedings concluded.)

* * *

U.S. DISTRICT COURT)

DISTRICT OF PUERTO RICO)

I certify that this transcript consisting of 143 pages is a true and accurate transcription to the best of my ability of the proceedings in this case before the Honorable United States District Court Judge Laura Taylor Swain, and the Honorable United States Magistrate Judge Judith Gail Dein on November 17, 2021.

S/ Amy Walker

Amy Walker, CSR 3799

Official Court Reporter